



TRANSPORTATION CABINET

Frankfort, Kentucky 40622
www.transportation.ky.gov/

Steven L. Beshear
Governor

Michael W. Hancock, P.E.
Secretary

KENTUCKY TRANSPORTATION CABINET DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM ELIGIBILITY

Thank you for your interest in participating in the Kentucky Transportation Cabinet's (KYTC) Certification Program to become a Disadvantaged Business Enterprise (DBE) and/or Airport Concession Disadvantaged Business Enterprise (ACDBE). Our objective is to ensure that disadvantaged business firms have the maximum opportunity to participate in US DOT-assisted contracts.

KYTC's Small Business Development Branch, within the Office for Civil Rights and Small Business Development (OCSBD), certifies firms that are at least 51 percent owned and controlled by one or more socially and economically disadvantaged individuals in accordance with the provisions of 49 CFR Part 26. Certification affords disadvantaged businesses an opportunity to participate in the performance of contracts and subcontracts financed in whole, or in part, with federal funds.

Socially and economically disadvantaged citizens or lawful permanent residents of the United States who are African American, Hispanic American, Native American, Asian-Pacific American, Asian-Indian American or women, and any other individual determined to be socially and economically disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act, are eligible for certification under this program.

New applications received will be reviewed on a first-come, first-served basis. All out-of-state firms must seek certification from their home state DOT before soliciting certification in Kentucky. KYTC will request an on-site review from the firm's home state DOT upon receipt of the application. On-site reviews completed on out-of-state firms must have been conducted by the home state within the last five years before the certification process can commence. If KYTC does not receive a copy of the home state's on-site review within 20 days from its initial request, KYTC will notify the firm in writing of the delay in the process and the reason for it. This communication will be sent within 30 days from the date on which KYTC received all application information required by 49 CFR 26.85(c) from the DBE firm.

KRS 517.120 states that a person, who knowingly establishes, assists in the establishment of, operates or assists in the operation of a sham or front company may be charged with a Class D felony.

Please note the following:

- (1) All out-of-state firms must be certified as a DBE in its state of residency by the highway agency prior to receiving certification in Kentucky.
- (2) Cabinet personnel will conduct an on-site inspection of the business premises and interview the principal owner(s) of the business.
- (3) Failure of the applicant to participate in the on-site inspection and interview shall be sufficient cause for the Cabinet to deny certification.
- (4) Additional information may be requested in order to determine whether the applicant should be certified. Failure of the applicant to provide requested information shall be cause for this office to deny the application.



An Equal Opportunity Employer M/F/D

(5) The Certification Committee shall issue a determination of eligibility within ninety (90) days of receipt of a completed application, provided a challenge of eligibility has not been received; and

(6) All certified firms must be operational prior to application.

If your firm is approved for certification by the Certification Committee, it will be entered in the KYTC database. Only firms currently certified as eligible DBEs and ACDBEs for KYTC may participate in the DBE program of US DOT grantees within the state of Kentucky.

Firms may still be certified as a DBE without being prequalified with the Division of Construction Procurement. However, in order to perform on KYTC highway construction projects, your firm must be prequalified. Information regarding prequalification may be obtained by contacting the Division of Construction Procurement at (502) 564-3500.

While registration with the Kentucky Secretary of State's Office is not required for DBE certification, KRS 14A.9-010 does require firms to be registered and in good standing in order to do business in the Commonwealth of Kentucky.

Enclosed, please find the following DBE program documents:

- (A) Unified Certification Program Application (UCP application for DBE/ACDBE certification) with KYTC's DBE supporting documents checklist;
- (B) Small Business Administration (SBA) Personal Financial Statement;
- (C) 49 CFR Part 26 (Federal Regulations, which describe the DBE Program and who is eligible to participate in it);
- (D) 49 CFR Part 26 Final Rule
- (E) US Small Business Size Standards

The application process begins when **all required documentation** has been received by this office. (*Refer to the KYTC DBE "supporting documents" checklist.*) In order to avoid unnecessary delays, please complete all portions of the Uniform Certification Application and include all copies of documents requested on the application, as well as, the KYTC DBE Application Supporting Documents Checklist. In addition, the Affidavit of Certification and the Personal Financial Statement must both be notarized.

Firms that have questions, comments or need assistance with Kentucky certification are encouraged to contact the Small Business Development Branch at 1-800-928-3079 or (502) 564-3601.

PLEASE RETURN COMPLETED FORMS TO:

**Kentucky Transportation Cabinet
Office for Civil Rights and Small Business Development
Small Business Development Branch
200 Mero St, 6th Floor West
Frankfort, KY 40622**

**AUTHORIZATION TO RELEASE
STATE OF KENTUCKY CERTIFICATION PROGRAM
DBE CERTIFICATION INFORMATION**

I hereby authorize the Kentucky Transportation Cabinet, Small Business Development Branch, to release upon written request, appropriate information related to my application(s) for DBE Certification in Kentucky.

Signed: _____
Name Date

Print Name and Title

Print Company Name

This authorization extends only to (initial all that you choose to authorize):

_____ Federal Agencies
_____ Other State Agencies
_____ Other Kentucky State Agencies
_____ Other Government Entities

This authorization will be kept in your state of Kentucky DBE Certification Program file and will remain valid until you make a written request for changes.

**Kentucky Transportation Cabinet Uniform Certification Program
Application for Certification as a Disadvantaged Business Enterprise
(DBE)**

INSTRUCTIONS AND INFORMATION

Please read these instructions completely and thoroughly!!!

1. All questions must be answered. Questions that do not apply to your firm should be marked “N/A.”
2. All documents requested on the Certification Checklist must be provided. Mark “N/A” for any items that do not pertain to your company.
3. **The Personal Financial Statement enclosed must be filled out in its entirety leaving no line blank.**
This form must be completed for each applicant firm owner and must be signed by each applicant firm owner in the presence of a Notary Public. Supporting documentation must be submitted to support all figures stated on this form, including but not limited to, bank statements, appraisals, published market values and any other items listed on this form.
4. **THE AFFIDAVIT OF CERTIFICATION MUST BE SIGNED BY THE PRINCIPAL OWNER(S) IN THE PRESENCE OF A NOTARY PUBLIC.**

Please note that failure to complete the application as instructed above will delay processing and may result in a denial of certification as a Disadvantaged Business Enterprise.

For Your Information

1. An on-site inspection and owner interview will be required as part of the certification process. Once the application is complete and all requested supplemental information and documentation has been received by the KY Transportation Cabinet’s Small Business Development Branch, the on-site inspection and owner interview should occur within 90 days.
2. Additional information may be required during the processing period. Delays in submitting requested information will cause a delay in processing the application.
3. Changes in ownership, control or operation of the business should be reported within 30 days of the occurrence. Any changes in ownership or transfer of ownership two (2) years prior to submission of an application with the Kentucky Transportation Cabinet will not be acceptable and will be seriously scrutinized for timing and reasons for ownership change.
4. All certified businesses will be listed in the Certified Disadvantaged Business Enterprises Directory for the KY Transportation Cabinet, which is listed on the Small Business Development website.
5. The certified Disadvantaged Business Enterprise must submit, on the anniversary date of the firm’s certification, a “No Change” affidavit. The affidavit affirms that there have been no changes in the firm’s circumstances affecting its ability to meet Part 26 size, disadvantage, ownership and control standards (except for changes about which the firm has submitted a “Notice of Change” affidavit to this office).
6. An applicant has the right to appeal a Denial of Certification by filing an appeal to the Kentucky Transportation Cabinet within thirty (30) days of the adverse determination or the U.S. Department of Transportation within ninety (90) days of the adverse determination.

7. Registration with the Secretary of State's Office is not a requirement for certification. However, in order to do business within the state of Kentucky, applicants (with the exception of sole proprietors) must be registered.

8. **Out-of-state firms:** KRS 176.150 states, "When an applicant is a foreign corporation (out-of-state), the application shall be accompanied by a certificate from the Secretary of State that such a corporation is authorized to do business in the state in which it is incorporated." You may contact the Kentucky Secretary of State's office at 800-464-5804 or 502-564-3490.

Under Sec. 26.107 of 49 CFR Part 26, dated February 2, 1999, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29, take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

**INSTRUCTIONS FOR COMPLETING THE DISADVANTAGED BUSINESS ENTERPRISE (DBE)
PROGRAM UNIFORM CERTIFICATION APPLICATION**

NOTE: If you require additional space for any question in this application, please attach additional sheets or copies as needed, taking care to indicate on each attached sheet/copy the section and number of this application to which it refers.

Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

Check the appropriate box indicating which program your firm is currently certified with. If you are already certified as a DBE, indicate in the appropriate box, the name of the certifying agency that has previously certified your firm and also indicate whether your firm has undergone an onsite visit. If your firm has already undergone an onsite visit/review, indicate the most recent date of that review and the state UCP that conducted the review.

B. Prior/Other Applications and Privileges

Indicate whether your firm or any of the persons listed has ever withdrawn an application for a DBE program or whether any have ever been denied certification, decertified, debarred, suspended, or had bidding privileges denied or restricted by any state, local agency or Federal entity. If your answer is yes, indicate the date of such action, identify the name of the agency, and explain fully the nature of the action in the space provided.

Section 2: GENERAL INFORMATION

A. Contact Information

- (1) State the name and title of the person who will serve as your firm's primary contact under this application.
- (2) State the legal name of your firm, as indicated in your firm's Articles of Incorporation or charter.
- (3) State the primary phone number of your firm.
- (4) State a secondary phone number, if any.
- (5) State your firm's fax number, if any.
- (6) State your firm's or your contact person's email address.
- (7) State your firm's website address, if any.
- (8) State the street address of your firm (i.e. the physical location of its offices -- not a post office box address).
- (9) State the mailing address of your firm, if it is different from your firm's street address.

B. Business Profile

- (1) In the box provided, briefly describe the primary business and professional activities in which your firm engages.
- (2) State the Federal Tax ID number of your firm as provided on your firm's filed tax returns, if you have one. This could also be the Social Security number of the owner of your firm.
- (3) State the date on which your firm was officially established, as stated in your firm's Articles of Incorporation or charter.
- (4) State the date on which you and/or each other owner took ownership of the firm.
- (5) Check the appropriate box that describes the manner in which you and each other owner acquired ownership of your firm. If you checked "Other," explain in the space provided.

- (6) Check the appropriate box that indicates whether your firm is "for profit."

NOTE: If you checked "No," then you do NOT qualify for the DBE program and therefore do not need to complete the rest of this application. The DBE program requires all participating firms be for-profit enterprises.

- (7) Check the appropriate box that describes the legal form of ownership of your firm, as indicated in your firm's Articles of Incorporation. If you checked "Other," briefly explain in the space provided.
- (8) Check the appropriate box that indicates whether your firm has ever existed under different ownership, a different type of ownership or a different name. If you checked "Yes," specify which and briefly explain the circumstances in the space provided.
- (9) Indicate in the spaces provided how many employees your firm has, specifying the number of employees who work on a full-time and part-time basis.
- (10) Specify the total gross receipts of your firm for each of the past three years, as declared in your firm's filed tax returns.

C. Relationships with Other Businesses

- (1) Check the appropriate box that indicates whether your firm is co-located at any of its business locations or whether your firm shares a telephone number(s), a post office box, any office space, a yard, warehouse, other facilities, any equipment, or any office staff with any other business, organization, or entity of any kind. If you answered "Yes," then specify the name of the other firm(s) and briefly explain the nature of the shared facilities or other items in the space provided.
- (2) Check the appropriate box that indicates whether at present, or at any time in the past:
 - (a) Your firm has been a subsidiary of any other firm;
 - (b) Your firm consisted of a partnership in which one or more of the partners are other firms;
 - (c) Your firm has owned any percentage of any other firm; and
 - (d) Your firm has had any subsidiaries of its own.
- (3) Check the appropriate box that indicates whether any other firm has ever had an ownership interest in your firm.
- (4) If you answered "Yes," to any of the questions in (2)(a)-(d) or (3), identify the name, address and type of business for each.

D. Immediate Family Member Businesses

Check the appropriate box that indicates whether any of your immediate family members own or manage

another company. An “immediate family member” is any person who is your father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law. If you answered “Yes,” provide the name of each relative, your relationship to them, the name of the company they own or manage, the type of business and whether they own or manage the company.

Section 3: OWNERSHIP

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (if your firm has more than one owner, provide completed copies of this section for each additional owner):

A. Background Information

- (1) Give the name of the owner.
- (2) State his/her title or position within your firm.
- (3) Give his/her home phone number.
- (4) State his/her home (street) address.
- (5) Check the appropriate box that indicates this owner’s gender.
- (6) Check the appropriate box that indicates this owner’s ethnicity (check all that apply). If you checked “Other,” specify this owner’s ethnic group/identity not otherwise listed.
- (7) Check the appropriate box to indicate whether this owner is a U.S. citizen.
- (8) If this owner is not a U.S. citizen, check the appropriate box that indicates whether this owner is a lawfully admitted permanent resident. If this owner is neither a U.S. citizen nor a lawfully admitted permanent resident of the U.S., then this owner is NOT eligible for certification as a DBE owner. This, however, does not necessarily disqualify your firm altogether from the DBE program if another owner is a U.S. citizen or lawfully admitted permanent resident and meets the program’s other qualifying requirements.

B. Ownership Interest

- (1) State the number of years during which this owner has been an owner of your firm.
- (2) Indicate the dollar value of this owner’s initial investment to acquire an ownership interest in your firm, broken down by cash, real estate, equipment, and/or other investment.
- (3) State the percentage of total ownership control of your firm that this owner possesses.
- (4) State the familial relationship of this owner to each other owner of your firm.
- (5) Indicate the number, percentage of the total, class, date acquired, and method by which this owner acquired his/her shares of stock in your firm.
- (6) Check the appropriate box that indicates whether this owner performs a management or supervisory function for any other business. If you checked “Yes,” state the name of the other business and this owner’s title or function held in that business.

- (7) Check the appropriate box that indicates whether this owner owns or works for any other firm(s) that has any relationship with your firm. If you checked “Yes,” identify the name of the other business and this owner’s title or function held in that business. Briefly describe the nature of the business relationship in the space provided.

C. Disadvantaged Status

NOTE: You only need to complete this section for each owner that is applying for DBE qualification (i.e. for each owner who is claiming to be “socially and economically disadvantaged” and whose ownership interest is to be counted toward the control and 51% ownership requirements of the DBE program)

- (1) Indicate in the space provided the total Personal Net Worth (PNW) of each owner who is applying for DBE qualification. Use the PNW calculator form at the end of this application to compute each owner’s PNW.
- (2) Check the appropriate box that indicates whether any trust has ever been created for the benefit of this disadvantaged owner. If you answered “Yes,” briefly explain the nature, history, purpose, and current value of the trust(s).

Section 4: CONTROL

A. Identify your firm's Officers and Board of Directors:

- (1) In the space provided, state the name, title, date of appointment, ethnicity and gender of each officer of your firm.
- (2) In the space provided, state the name, title, date of appointment, ethnicity and gender of each individual serving on your firm’s Board of Directors.
- (3) Check the appropriate box that indicates whether any of your firm’s officers and/or directors listed above, perform a management or supervisory function for any other business. If you answered “Yes,” identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
- (4) Check the appropriate box that indicates whether any of your firm’s officers and/or directors listed above own or work for any other firm(s) that has a relationship with your firm. If you answered “Yes,” identify the name of the firm, the officer or director, and the nature of his/her business relationship with that other firm.

B. Identify your firm's management personnel (by name, title, ethnicity and gender) who control your firm in the following areas:

- (1) Making of financial decisions on your firm’s behalf, including the acquisition of lines of credit, surety bonds, supplies, etc.;
- (2) Estimating and bidding, including calculation of cost estimates, bid preparation and submission;
- (3) Negotiating and contract execution, including participation in any of your firm’s negotiations and executing contracts on your firm’s behalf;

- (4) Hiring and/or firing of management personnel, including interviewing and conducting performance evaluations;
 - (5) Field/Production operations supervision, including site supervision, scheduling, project management services, etc.;
 - (6) Office management;
 - (7) Marketing and sales;
 - (8) Purchasing of major equipment;
 - (9) Signing company checks (for any purpose); and
 - (10) Conducting any other financial transactions on your firm's behalf not otherwise listed.
 - (11) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
 - (12) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the name of the person and the nature of his/her business relationship with that other firm.
- C. Indicate your firm's inventory in the following categories:**
- (1) Equipment**
State the type, make and model, and current dollar value of each piece of equipment held and/or used by your firm. Indicate whether each piece is either owned or leased by your firm.
 - (2) Vehicles**
State the type, make and model, and current dollar value of each motor vehicle held and/or used by your firm. Indicate whether each vehicle is either owned or leased by your firm.
 - (3) Office Space**
State the street address of each office space held and/or used by your firm. Indicate whether your firm owns or leases the office space and the current dollar value of that property or its lease.
 - (4) Storage Space**
State the street address of each storage space held and/or used by your firm. Indicate whether your firm owns or leases the storage space and the current dollar value of that property or its lease.
- D. Does your firm rely on any other firm for management functions or employee payroll?**
Check the appropriate box that indicates whether your firm relies on any other firm for management functions or for employee payroll. If you answered "Yes," briefly explain the nature of that reliance and the extent to which the other firm carries out such functions.
- E. Financial Information**
- (1) Banking Information
 - (a) State the name of your firm's bank.
 - (b) Give the main phone number of your firm's bank branch.
 - (c) Give the address of your firm's bank branch.
 - (2) Bonding Information
 - (a) State your firm's Binder Number.
 - (b) State the name of your firm's bond agent and/or broker.
 - (c) Give your agent's/broker's phone number.
 - (d) Give your agent's/broker's address.
 - (e) State your firm's bonding limits (in dollars), specifying both the Aggregate and Project Limits.
- F. Identify all sources, amounts and purposes of money loaned to your firm, including the names of persons or firms securing the loan if other than the listed owner:**
State the name and address of each source, the original dollar amount and the current balance of each loan, and the purpose for which each loan was made to your firm.
- G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years:**
Indicate in the spaces provided, the type of contribution or asset that was transferred, its current dollar value, the person or firm from whom it was transferred, the person or firm to whom it was transferred, the relationship between the two persons and/or firms, and the date of the transfer.
- H. List current licenses/permits held by any owner or employee of your firm.**
List the name of each person in your firm who holds a professional license or permit, the type of permit or license, the expiration date of the permit or license, and the license/permit number and issuing State of the license or permit.
- I. List the three largest contracts completed by your firm in the past three years, if any.**
List the name of each owner or contractor for each contract, the name and location of the projects under each contract, the type of work performed on each contract and the dollar value of each contract.
- J. List the three largest active jobs on which your firm is currently working.**
For each active job listed, state the name of the prime contractor and the project number, the location, the type of work performed, the project start date, the anticipated completion date and the dollar value of the contract.

AFFIDAVIT & SIGNATURE

Carefully read the attached affidavit in its entirety. Fill in the required information for each blank space, and sign and date the affidavit in the presence of a Notary Public who must then notarize the form.

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
49 C.F.R. PART 26

UNIFORM CERTIFICATION APPLICATION

ROADMAP FOR APPLICANTS

① Should I apply?

- Is your firm at least 51%-owned by a socially and economically disadvantaged individual(s) who also controls the firm?
- Is the disadvantaged owner a U.S. citizen or lawfully admitted permanent resident of the U.S.?
- Does the disadvantaged owner's Personal Net Worth **not** exceed \$1.32 million (excluding the individual's ownership interest in the applicant firm and the equity in his/her primary residence)?
- Is your firm a small business that meets the Small Business Administration's (SBA's) size standard and does not exceed \$22.41 million in gross annual receipts?
- Is your firm organized as a for-profit business?

⇒ If you answered "Yes" to all of the questions above, you may be eligible to participate in the U.S. DOT DBE program.

② Be sure to attach all of the required documents listed in the Documents Check List at the end of this form with your completed application.

③ Where can I find more information?

- U.S. DOT – <http://osdbuweb.dot.gov/DBEProgram/index.cfm> (this site provides useful links to the rules and regulations governing the DBE program, questions and answers, and other pertinent information)
- SBA – <http://www.sba.gov/services/contractingopportunities/sizestandardtopics/index.html> (provides listing of NAICS codes and Table of size standards)
- 49 CFR Part 26 (the rules and regulations governing the DBE program)

Updated 5/11/2011

Under Sec. 26.107 of 49 CFR Part 26, dated February 2, 1999, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29, take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

Is your firm currently certified for any of the following programs? (If Yes, check appropriate box(es))	<input type="checkbox"/> DBE	Name of certifying agency:
		Has your firm's state UCP conducted an on-site visit? <input type="checkbox"/> Yes, on ____/____/____ State: _____ <input type="checkbox"/> No

B. Prior/Other Applications and Privileges

Has your firm (under any name) or any of its owners, Board of Directors, officers or management personnel, ever withdrawn an application for any of the programs listed above, or ever been denied certification, decertified, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity? <input type="checkbox"/> Yes, on ____/____/____ <input type="checkbox"/> No If Yes, identify State and name of state, local, or Federal agency and explain the nature of the action:
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Section 2: GENERAL INFORMATION

A. Contact Information

(1) Contact person and Title:		(2) Legal name of firm:		
(3) Phone #:	(4) Other Phone #:		(5) Fax #:	
(6) E-mail:		(7) Website (if have one):		
(8) Street address of firm (No P.O. Box):		City:	County/Parish:	State: Zip:
(9) Mailing address of firm (if different):		City:	County/Parish:	State: Zip:

B. Business Profile

(1) Describe the primary activities of your firm:		(2) Federal Tax ID (if any):	
(3) This firm was established on ____/____/____		(4) I/We have owned this firm since: ____/____/____	
(5) Method of acquisition (check all that apply): <input type="checkbox"/> Started new business <input type="checkbox"/> Bought existing business <input type="checkbox"/> Inherited business <input type="checkbox"/> Secured concession <input type="checkbox"/> Merger or consolidation <input type="checkbox"/> Other (explain) _____			
(6) Is your firm "for profit"? <input type="checkbox"/> Yes <input type="checkbox"/> No		⊗ STOP! If your firm is NOT for-profit, then you do NOT qualify for this program and do NOT need to fill out this application.	

<p>(7) Type of firm (<i>check all that apply</i>):</p> <p><input type="checkbox"/> Sole Proprietorship</p> <p><input type="checkbox"/> Partnership</p> <p><input type="checkbox"/> Corporation</p> <p><input type="checkbox"/> Limited Liability Partnership</p> <p><input type="checkbox"/> Limited Liability Corporation</p> <p><input type="checkbox"/> Joint Venture</p> <p><input type="checkbox"/> Other, Describe: _____</p>						
<p>(8) Has your firm ever existed under different ownership, a different type of ownership, or a different name?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes, explain: _____</p>						
<p>(9) Number of employees: Full-time _____ Part-time _____ Total _____</p>						
<p>(10) Specify the gross receipts of the firm for the last 3 years:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 60%;">Year _____</td> <td style="width: 40%;">Total receipts \$ _____</td> </tr> <tr> <td>Year _____</td> <td>Total receipts \$ _____</td> </tr> <tr> <td>Year _____</td> <td>Total receipts \$ _____</td> </tr> </table>	Year _____	Total receipts \$ _____	Year _____	Total receipts \$ _____	Year _____	Total receipts \$ _____
Year _____	Total receipts \$ _____					
Year _____	Total receipts \$ _____					
Year _____	Total receipts \$ _____					

C. Relationships with Other Businesses

<p>(1) Is your firm co-located at any of its business locations, or does it share a telephone number, P.O. Box, office space, yard, warehouse, facilities, equipment, or office staff, with any other business, organization, or entity?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes, identify: Other Firm's name: _____</p> <p>Explain nature of shared facilities: _____</p>													
<p>(2) At present, or at any time in the past, has your firm:</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">(a) been a subsidiary of any other firm?</td> <td style="text-align: right; padding: 2px;"><input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> <tr> <td style="padding: 2px;">(b) consisted of a partnership in which one or more of the partners are other firms?</td> <td style="text-align: right; padding: 2px;"><input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> <tr> <td style="padding: 2px;">(c) owned any percentage of any other firm?</td> <td style="text-align: right; padding: 2px;"><input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> <tr> <td style="padding: 2px;">(d) had any subsidiaries?</td> <td style="text-align: right; padding: 2px;"><input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> </table>	(a) been a subsidiary of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No	(b) consisted of a partnership in which one or more of the partners are other firms?	<input type="checkbox"/> Yes <input type="checkbox"/> No	(c) owned any percentage of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No	(d) had any subsidiaries?	<input type="checkbox"/> Yes <input type="checkbox"/> No				
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(c) owned any percentage of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No												
(d) had any subsidiaries?	<input type="checkbox"/> Yes <input type="checkbox"/> No												
<p>(3) Has any other firm had an ownership interest in your firm at present or at any time in the past? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>													
<p>(4) If you answered "Yes" to any of the questions in (2)(a)-(d) and/or (3), identify the following for each (<i>attach extra sheets, if needed</i>):</p> <table style="width: 100%; border: none;"> <tr> <th style="text-align: left; width: 30%;"><u>Name</u></th> <th style="text-align: left; width: 30%;"><u>Address</u></th> <th style="text-align: left; width: 40%;"><u>Type of Business</u></th> </tr> <tr> <td>1. _____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>2. _____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>3. _____</td> <td>_____</td> <td>_____</td> </tr> </table>		<u>Name</u>	<u>Address</u>	<u>Type of Business</u>	1. _____	_____	_____	2. _____	_____	_____	3. _____	_____	_____
<u>Name</u>	<u>Address</u>	<u>Type of Business</u>											
1. _____	_____	_____											
2. _____	_____	_____											
3. _____	_____	_____											

D. Immediate Family Member Businesses

<p>Do any of your immediate family members own or manage another company? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes, then list (<i>attach extra sheets, if needed</i>):</p> <table style="width: 100%; border: none;"> <tr> <th style="text-align: left; width: 15%;"><u>Name</u></th> <th style="text-align: left; width: 20%;"><u>Relationship</u></th> <th style="text-align: left; width: 20%;"><u>Company</u></th> <th style="text-align: left; width: 25%;"><u>Type of Business</u></th> <th style="text-align: left; width: 20%;"><u>Own or Manage?</u></th> </tr> <tr> <td>1. _____</td> <td>_____</td> <td>_____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>2. _____</td> <td>_____</td> <td>_____</td> <td>_____</td> <td>_____</td> </tr> </table>					<u>Name</u>	<u>Relationship</u>	<u>Company</u>	<u>Type of Business</u>	<u>Own or Manage?</u>	1. _____	_____	_____	_____	_____	2. _____	_____	_____	_____	_____
<u>Name</u>	<u>Relationship</u>	<u>Company</u>	<u>Type of Business</u>	<u>Own or Manage?</u>															
1. _____	_____	_____	_____	_____															
2. _____	_____	_____	_____	_____															

Section 3: OWNERSHIP

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below *(If more than one owner, attach separate sheets for each additional owner):*

A. Background Information

(1) Name:	(2) Title:	(3) Home Phone #:
(4) Home Address <i>(street and number)</i> : _____ City: _____ State: _____ Zip: _____		
(5) Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female	(6) Ethnic group membership <i>(Check all that apply)</i> : <input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Asian Pacific <input type="checkbox"/> Subcontinent Asian <input type="checkbox"/> Other <i>(specify)</i> _____	
(7) U.S. Citizen: <input type="checkbox"/> Yes <input type="checkbox"/> No		
(8) Lawfully Admitted Permanent Resident: <input type="checkbox"/> Yes <input type="checkbox"/> No		

B. Ownership Interest

(1) Number of years as owner:	(2) Initial investment to acquire ownership <u>Type</u> <u>Dollar Value</u> Cash \$ interest in firm: Real Estate \$ Equipment \$ Other \$
(3) Percentage owned:	
(4) Familial relationship to other owners:	
(5) Shares of Stock: <u>Number</u> <u>Percentage</u> <u>Class</u> <u>Date acquired</u> <u>Method Acquired</u>	
(6) Does this owner perform a management or supervisory function for any other business? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify: Name of Business: _____ Function/Title: _____	
(7) Does this owner own or work for any other firm(s) that has a relationship with this firm <i>(e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)</i> ? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify: Name of Business: _____ Function/Title: _____ Nature of Business Relationship: _____	

C. Disadvantaged Status – NOTE: Complete this section only for each owner applying for DBE qualification (i.e. for each owner claiming to be socially and economically disadvantaged)

(1) What is the Personal Net Worth (PNW) of the owner(s) applying for DBE qualification? <i>(Use and attach the Personal Financial Statement form at the end of this application; attach additional sheets if more than one owner is applying)</i> <div style="height: 60px;"></div>
(2) Has any trust been created for the benefit of this disadvantaged owner(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, explain <i>(attach additional sheets if needed)</i> : <div style="height: 100px;"></div>

Section 4: CONTROL

A. Identify your firm's Officers & Board of Directors *(If additional space is required, attach a separate sheet):*

	Name	Title	Date Appointed	Ethnicity	Gender
(1) Officers of the Company	(a)				
	(b)				
	(c)				
	(d)				
	(e)				
(2) Board of Directors	(a)				
	(b)				
	(c)				
	(d)				
	(e)				

(3) Do any of the persons listed in (1) and/or (2) above perform a management or supervisory function for any other business? ☐ Yes ☐ No

If Yes, identify for each: Person: _____ Title: _____

Business: _____ Function: _____

(4) Do any of the persons listed (1) and/or (2) above own or work for any other firm(s) that has a relationship with this firm (*e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.*)? ☐ Yes ☐ No

If Yes, identify for each: Firm Name: _____ Person: _____

Nature of Business Relationship: _____

B. Identify your firm's management personnel who control your firm in the following areas *(If more than two persons, attach a separate sheet):*

	Name	Title	Ethnicity	Gender
(1) Financial Decisions <i>(responsibility for acquisition of lines of credit, surety bonding, supplies, etc.)</i>	a.			
	b.			
(2) Estimating and bidding	a.			
	b.			
(3) Negotiating and Contract Execution	a.			
	b.			
(4) Hiring/firing of management personnel	a.			
	b.			
(5) Field/Production Operations Supervisor	a.			
	b.			
(6) Office management	a.			
	b.			
(7) Marketing/Sales	a.			
	b.			
(8) Purchasing of major equipment	a.			
	b.			

(9) Authorized to Sign Company Checks (for any purpose)	a.			
	b.			
(10) Authorized to make Financial Transactions	a.			
	b.			
(11) Do any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify for each: Person: _____ Title: _____ Business: _____ Function: _____				
(12) Do any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify for each: Firm Name: _____ Person: _____ Nature of Business Relationship: _____				

C. Indicate your firm's inventory in the following categories (*attach additional sheets if needed*):

(1) Equipment

Type of Equipment	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(2) Vehicles

Type of Vehicle	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(3) Office Space

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

(4) Storage Space

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

D. Does your firm rely on any other firm for management functions or employee payroll? ☐ Yes ☐ No

If Yes, explain:

E. Financial Information

(1) Banking Information:	
(a) Name of bank: _____	(b) Phone No: () _____
(c) Address of bank: _____	City: _____ State: _____ Zip: _____
(2) Bonding Information: If you have bonding capacity, identify:	
(a) Binder No: _____	(c) Phone No: () _____
(b) Name of agent/broker _____	(d) Address of agent/broker: _____
City: _____	State: _____ Zip: _____
(e) Bonding limit: Aggregate limit \$ _____	Project limit \$ _____

F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of any persons or firms securing the loan, if other than the listed owner:

Name of Source	Address of Source	Name of Person Securing the Loan	Original Amount	Current Balance	Purpose of Loan
1.					
2.					
3.					

G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years (attach additional sheets if needed):

Contribution/Asset	Dollar Value	From Whom Transferred	To Whom Transferred	Relationship	Date of Transfer
1.					
2.					
3.					

H. List current licenses/permits held by any owner and/or employee of your firm (e.g. contractor, engineer, architect, etc.)(attach additional sheets if needed):

Name of License/Permit Holder	Type of License/Permit	Expiration Date	License Number and State
1.			
2.			
3.			

I. List the three largest contracts completed by your firm in the past three years, if any:

Name of Owner/Contractor	Name/Location of Project	Type of Work Performed	Dollar Value of Contract
1.			
2.			
3.			

J. List the three largest active jobs on which your firm is currently working:

Name of Prime Contractor and Project Number	Location of Project	Type of Work	Project Start Date	Anticipated Completion Date	Dollar Value of Contract
1.					
2.					
3.					

AFFIDAVIT OF CERTIFICATION

This form must be signed and notarized for each owner upon which disadvantaged status is relied.

A MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PENALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.

I, _____ (full name printed), swear or affirm under penalty of law that I am _____ (title) of applicant firm _____ (firm name) and that I have read and understood all of the questions in this application and that all of the foregoing information and statements submitted in this application and its attachments and supporting documents are true and correct to the best of my knowledge, and that all responses to the questions are full and complete, omitting no material information. The responses include all material information necessary to fully and accurately identify and explain the operations, capabilities and pertinent history of the named firm as well as the ownership, control and affiliations thereof.

I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application and I authorize such agency to contact any entity named in the application, and the named firm's bonding companies, banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility.

I agree to submit to government audit, examination and review of books, records, documents and files, in whatever form they exist, of the named firm and its affiliates, inspection of its place(s) of business and equipment, and to permit interviews of its principals, agents, and employees. I understand that refusal to permit such inquiries shall be grounds for denial of certification.

If awarded a contract or subcontract, I agree to promptly and directly provide the prime contractor, if any, and the Department, recipient agency, or federal funding agency on an ongoing basis, current, complete and accurate information regarding (1) work performed on the project; (2) payments; and (3) proposed changes, if any, to the foregoing arrangements.

I agree to provide written notice to the recipient agency or Unified Certification Program (UCP) of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership, address, telephone number, etc.).

I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

I certify that I am a socially and economically disadvantaged individual who is an owner of the above-referenced firm seeking certification as a Disadvantaged Business Enterprise (DBE). In support of my application, I certify that I am a member of one or more of the following groups, and that I have held myself out as a member of the group(s): [check all that apply]

☐ Female ☐ Subcontinent Asian American ☐ Hispanic American ☐ Other: Specify _____
☐ Native American ☐ Asian-Pacific American ☐ Black American _____

I certify that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination because of my identity as a member of one or more of the groups identified above, without regard to my individual qualities.

I further certify that my personal net worth does not exceed \$1.32 million and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I declare under penalty of perjury that the information provided in this application and supporting documents is true and correct.

Executed on _____
(Date)

Signature _____
(DBE Applicant)

NOTARY CERTIFICATE

KYTC DBE APPLICATION SUPPORTING DOCUMENTS CHECKLIST

In order to complete your application for DBE certification, you must attach copies of all of the following documents as they apply to you and your firm.

All Applicants

- ☐ Work experience résumés (that include places of ownership/employment with corresponding dates), for all owners and officers of your firm
- ☐ Copy of Driver's License
- ☐ Copy of Birth Certificate or Passport
- ☐ Copy of Tribal Card, if applicable
- ☐ List of NAICS codes you wish to be certified for
- ☐ Personal Financial Statement (form available with this application)
- ☐ Personal tax returns for the past three (3) years, if applicable, for each owner claiming disadvantaged status
- ☐ Your firm's tax returns (gross receipts) and all related schedules for the past three years
- ☐ Documented proof of contributions used to acquire ownership for each owner (*e.g. both sides of cancelled checks*)
- ☐ Your firm's signed loan agreements, security agreements, and bonding forms
- ☐ Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
- ☐ List of equipment leased and signed lease agreements
- ☐ List of construction equipment and/or vehicles owned and titles/proof of ownership
- ☐ Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past two years
- ☐ Year-end balance sheets and income statements for the past three (3) years (*or life of firm, if less than three (3) years*); a new business must provide a current balance sheet
- ☐ All relevant licenses, license renewal forms, permits, and haul authority forms
- ☐ DBE certifications, denials, and/or decertifications, if applicable
- ☐ Bank authorization and signatory cards
- ☐ Schedule of salaries (or other compensation or remuneration) paid to all officers, managers, owners, and/or directors of the firm
- ☐ Trust agreements held by any owner claiming disadvantaged status, if any

Partnership or Joint Venture

- ☐ Original and any amended Partnership or Joint Venture Agreements

Corporation or LLC

- ☐ Official Articles of Incorporation (*signed by the state official*)
- ☐ Both sides of all corporate stock certificates and your firm's stock transfer ledger
- ☐ Shareholders' Agreement
- ☐ Minutes of all stockholders and board of directors meetings
- ☐ Corporate by-laws and any amendments
- ☐ Corporate bank resolution and bank signature cards
- ☐ Official Certificate of Formation and Operating Agreement with any amendments (for LLCs)

Trucking Company

- ☐ Documented proof of ownership of the company
- ☐ Insurance agreements for each truck owned or operated by your firm
- ☐ Title(s) and registration certificate(s) for each truck owned or operated by your firm
- ☐ List of U.S. DOT numbers for each truck owned or operated by your firm

Regular Dealer

- ☐ Proof of warehouse ownership or lease
- ☐ List of product lines carried
- ☐ List of distribution equipment owned and/or leased

NOTE: The specific state UCP to which you are applying may have additional required documents that you must also supply with your application. Contact the appropriate certifying agency to which you are applying to find out if more is required. (See Supplemental Document Checklist)

Kentucky Transportation Cabinet

Instructions for Personal Financial Statement

For New Applicants:

All owners claiming disadvantaged status **MUST** submit an up-to-date Personal Financial Statement (or PNW Statement) and support it by providing complete (all schedules), signed copies of their last three (3) Federal Individual (1040) and Business Income Tax Returns filed with the Internal Revenue Service.

For Continuing Eligibility:

All owners claiming disadvantaged status **MUST** submit an up-to-date Personal Financial Statement and support it by providing a complete (all schedules), signed copy of their most recent Federal Individual (1040) and Business Income Tax Returns filed with the Internal Revenue Service.

Each owner claiming disadvantaged status must provide his or her own individual Personal Financial Statement and complete personal and business tax returns. **All PNWs must be dated, signed and notarized within the past six months.**

Married owners:

If married owners are claiming disadvantaged status, both must provide individual Personal Financial Statements. Joint statements are NOT acceptable. However, a single set of complete "joint" tax returns is acceptable in this situation.

Assets and liabilities may be halved if jointly owned. If assets and liabilities are separately owned, these items should only be reported on the respective owner's form.

Note: Please be advised that federal recipients, such as KYTC, must exclude an individual's ownership interest in his or her firm and the individual's equity in his or her primary residence. However, you must provide KYTC with the dollar amount being excluded as your ownership interest in the firm and documentation sufficient to support that exclusion. KYTC will assume, unless advised otherwise, that the equity in your primary residence is the difference between its present market value and current mortgage balance as reported by you in Section 4, Property A (Primary Residence) on the form.

Please do not make adjustments to your figures pursuant to US Department of Transportation (US DOT) regulations 49 CFR Part 26. This agency will use the information provided on your completed Personal Financial Statement to determine your Personal Net Worth according to 49 CFR Part 26. An individual's Personal Net Worth, according to 49 CFR Part 26 includes only his or her own share of assets held separately, jointly or as community property with the individual's spouse and excludes the following:

- Individual's ownership interest in the applicant firm;
- Individual's equity in his or her primary residence;
- The total dollar amount of all mortgages, loans, lines of credit and other financial lien amounts against the applicant business, even if you are personally liable for repayment should the business default, as a Liability;
- Contingent liabilities cannot be used to reduce personal net worth;
- Tax and interest penalties that would accrue if retirement savings or investments (e.g., pension plans, Individual Retirement Accounts, 401(k) accounts, etc.) were distributed at the present time.

If your Personal Net Worth, according to 49 CFR Part 26 exceeds the \$1.32 million cap and you and other individuals are the majority owners of an applicant firm, the firm is not eligible for DBE/ACDBE certification. If the Personal Net Worth of the majority owner(s) exceeds the \$1.32 million cap at any time after your firm is certified, the firm is no longer eligible for certification. Should that occur, it is your responsibility to contact KYTC's Small Business Development Branch in writing to advise that your firm no longer qualifies.

General Instructions

- You must fill out all line items on the Personal Financial Statement to the best of your ability **leaving no line blank**. Use 0 or N/A where the information does not apply.
- If necessary, use additional sheets of paper to report all information and details.
- If you have any questions about completing this form, please contact KYTC's Small Business Development Branch.
- The Personal Financial Statement must be **notarized** by someone other than a family member and/or spouse.

Specific Instructions

DATE AND CONTACT INFORMATION

Be sure to include the "As of" reporting date in the upper right corner of the first page and your contact information. Figures reflected must be accurate within the last six months.

ASSETS

All assets must be reported at their **current fair market values** as of the date of your statement. Assessor's assessed value for real estate, for example, is not acceptable. Assets held in a trust generally should be included.

Cash on Hand and in Banks: Enter the total amount of cash on-hand and in personal bank accounts other than savings.

Savings Accounts: Enter the total amount in all personal savings accounts.

IRA or other Retirement Account: Enter the total present value of all IRAs and other retirement accounts, including any deferred compensation and pension plans. You may be requested by KYTC to provide copies of the most recent statements to substantiate the amount listed.

Accounts & Notes Receivable: Enter the total value of all monies owed to you personally, if any. This should include shareholder loans to the applicant firm, if any. A complete description is required in Section 5.

Life Insurance-Cash Surrender Value Only: Enter the cash surrender value of any life insurance policies. This amount should not be the amount a beneficiary would receive upon your death, also known as face value. A complete description is required in Section 8.

Stocks and Bonds: Enter the current market value of your stocks and bonds or other securities. A complete listing and description is required in Section 3.

Real Estate: Enter the current fair market value of **all** real estate owned by you personally (not by your firm). A complete listing and description of all real estate owned, including your primary residence if any, is required in Section 4.

Automobile-Present Value: Enter the current fair market value of all personally owned automobiles. A complete description is required in Section 5.

Other Personal Property: Enter the current fair market value of all other personal property owned, but not included in the previous entries. This should include furniture, jewelry, artwork, etc. A complete description of these assets is required in Section 5.

Other Assets: Enter the current fair market value of all other assets personally owned, but not included in the previous entries. A complete description of these assets is required in Section 5.

Total Assets: Calculate the total value of all listed assets. Write total Assets on the **Total** line.

LIABILITIES

Accounts Payable: Enter the total value of all unpaid accounts payable that are your responsibility (i.e. gas, electric, telephone, etc.). This does not include bills in the firm's name.

Notes Payable to Bank and Others: Enter the total amount due on all notes payable to banks and others paid on an installment basis. Please be sure to include the total monthly payment amount in the space provided. This should include the amount of any loans from the applicant firm. This should **not**, however, include any mortgage balances or accounts included elsewhere on the form. A complete description of all notes payable to banks and others is required in Section 2. This does **not** include debts in the name of the firm.

Installment Account (Auto): Enter the amount of the present balance of the debt that you owe for any personal auto installment account(s). Please be sure to indicate the total monthly payment in the space provided.

Installment Account (Other): Enter amount of the present balance of the debt that you personally owe for other installment accounts. For example, include the balances of all credit card debts on this line. Please be sure to indicate the total monthly payment in the space provided.

Loans on Life Insurance: Enter the total value of all loans due on life insurance policies.

Mortgages on Real Estate: Enter the total balance on all mortgages payable on real estate, excluding any mortgages on any property held in the name of the firm. A complete breakdown of all mortgages on real estate is required in Section 4. The amount must correspond with the total of the mortgage balances amounts listed in Section 4.

Unpaid Taxes: Enter the total amount of all taxes that are currently due but are unpaid. Contingent tax liabilities or anticipated taxes for current year should not be included. A complete description is required in Section 6.

Other Liabilities: Enter the total value due on all other liabilities not classified in the previous entries. A complete description is required in Section 7.

Total Liabilities: Calculate the total of all listed liabilities. Write total Liabilities on the **Total Liabilities** line.

Net Worth: To compute Net Worth, subtract "Total Liabilities" from "Total Assets."

Total Assets - Total Liabilities=Net Worth

If your figures do not match, our form will be returned to you to correct. Indicate negative net worth in parenthesis ().

Total: Add the values entered for "Total Liabilities" and "Net Worth." Write the figure on the "Total" line found under "Net Worth." This amount must equal the total value of all assets.

SECTION 1. SOURCE OF INCOME

Salary: Enter the amount of your total annual salary/draws. This includes any salary from the applicant firm and if applicable, any salary from outside employment.

Net Investment Income: Enter the total amount of all personal investment income (i.e. dividends, interest, etc.). Include any dividends from stock personally owned in the applicant firm.

Real Estate Income: Enter the total amount of all real estate income received from the sale, rental, lease, etc. of real estate held. This includes only income in your name, or your share of joint income, and not income in the name of your firm.

Other Income: Enter the total amount of all other income received (i.e. alimony, social security, pension, etc.). Please be sure to describe the source of the other income in the space provided below in this section.

CONTINGENT LIABILITIES

Contingent liabilities are liabilities that belong to you only if an event(s) should occur. For example, if you have co-signed on a relative's loan, but you are not responsible for the debt until your relative defaults, that is a contingent liability. Contingent liabilities do not count toward your net worth until they become actual liabilities.

As Endorser or Co-Maker: Enter the total potential liabilities due as a result of being a co-signer for a loan or other commitments.

Legal Claims and Judgments: Enter your potential liabilities due as a result of legal claims from judgments, lawsuits or other legal matters. Include your share of any joint claim or liability. Do not include claims and liabilities in the name of your firm.

Provisions for Federal Income Tax: Enter the total amount of all federal taxes for which you are potentially liable due to an anticipated gain on the pending sale of an asset or other circumstances, such as pending disputes or litigation which could possibly result in a personal tax liability.

Other Special Debt: Enter the total amount due on all remaining potential debts not accounted for, in your name individually or your share of a joint debt.

SECTION 2. NOTES PAYABLE TO BANKS AND OTHERS

Enter the name and address of note holder(s), original balance, current balance, payment amount, frequency and how secured for each note payable as entered in the "Liabilities" column. Do not include loans for your business or mortgages for your properties.

SECTION 3. STOCKS AND BONDS

Enter the number of public shares, names of securities, cost, fair market value and the date of fair market value for all public shares of stock and bonds held. You may attach recent copies of your stock account listings. Do not include stock in your business.

SECTION 4. REAL ESTATE OWNED

Starting with your primary residence (be sure to identify it as your primary residence), enter the type of property, address, date of purchase, original cost, present fair market value, name and address of mortgage holder, mortgage account number, mortgage balance, amount of payment and status of mortgage for all real estate held. Please ensure that this section contains all real estate owned, including rental properties, vacation properties, commercial properties, etc. Your ownership percentage in each property listed should be labeled next to the type of property. Second mortgages should also be included in this section. Attach additional sheets as needed.

Total "Present Market Value" amounts times ownership percentage should correspond with the "Real Estate" amount listed in the "Assets" column. Additionally, total "Mortgage Balance" amounts times ownership percentage should correspond with the "Mortgages on Real Estate" amount listed in the "Liabilities" column.

SECTION 5. OTHER PERSONAL PROPERTY AND OTHER ASSETS

Itemize and describe in detail other personal property and other assets owned as listed in the "Assets" column. For other personal property, include boats, trailers, jewelry, furniture, household goods, collectibles, clothing, etc. For other assets, include equity interest in the applicant firm, other businesses, trusts, investments, etc.

SECTION 6. UNPAID TAXES

Describe in detail as to the type, to whom payable, when due, amount, and to what property, if any, the tax lien attaches. Please refer to the unpaid taxes listed in the "Liabilities" column. If none, state "NONE." This section should not include the contingent tax liabilities or anticipated taxes owed for the current year. For any unusually large amounts, you must include documentation, such as tax liens, to support the amounts.

SECTION 7. OTHER LIABILITIES

Describe in detail any other liabilities as referenced by the value listed in the "Liabilities" column. If none, state "NONE." For any unusually large amounts, you must include documentation, such as tax liens or bills, to support the amounts.

SECTION 8. LIFE INSURANCE HELD

Describe all life insurance policies held. Please be sure to include the face amount of the policies, name of insurance company, beneficiaries and cash surrender values of the policies. Total cash surrender values should correspond with the "Life Insurance-Cash Surrender Value Only" amount listed in the "Assets" column on page 1.

EXECUTION OF STATEMENT

Be sure to sign and date the PNW in front of a notary who will notarize the document. Also, indicate your social security number in the space provided.

**PERSONAL FINANCIAL STATEMENT****U.S. SMALL BUSINESS ADMINISTRATION**

As of _____, _____

Complete this form for: (1) each proprietor; (2) general partner; (3) managing member of a limited liability company (LLC); (4) each owner of 20% or more of the equity of the Applicant (including the assets of the owner's spouse and any minor children); and (5) any person providing a guaranty on the loan. **Return completed form to:** 7(a) loans - to the lender processing the SBA application; 504 loans - to the Certified Development Company processing the SBA application; Disaster loans - to the Disaster Processing and Disbursement Center at 14925 Kingsport Road, Fort Worth, TX 76155-2243; and 8(a)/BD applicants who are *individuals claiming social and economic disadvantaged status and their spouses* - electronically at <http://www.sba.gov> or send hard copy with paper application to either of the two following offices:

8(a) BD only	Mail to the following address, if your firm is located in one of the states below:	Mail to the following address, if your firm is located in one of the states below:
	US Small Business Administration DPCE Central Office Duty Station Parkview Towers 1150 First Avenue 10th Floor, Suite 100I King of Prussia, PA 19406	Small Business Administration Division of Program Certification and Eligibility 455 Market Street, 6th Floor San Francisco, CA 94105
	MA, ME, NH, CT, VT, RI, NY, PR (Puerto Rico), VI (US Virgin Islands), NJ, PA, MD, VA, WV, DC, DE, GA, AL, NC, SC, MS, FL, KY, TN	IL, OH, MI, IN, MN, WI, TX, NM, AR, LA, OK, MO, IA

Name	Business Phone
Residence Address	Residence Phone
City, State, & Zip Code	
Business Name of Applicant/Borrower	

ASSETS		LIABILITIES	
	(Omit Cents)		(Omit Cents)
Cash on hand & in Banks	\$	Accounts Payable	\$
Savings Accounts	\$	Notes Payable to Banks and Others	\$
IRA or Other Retirement Account	\$	(Describe in Section 2)	
(Describe in Section 5)		Installment Account (Auto)	\$
Accounts & Notes Receivable	\$	Mo. Payments \$	
(Describe in Section 5)		Installment Account (Other)	\$
Life Insurance-Cash Surrender Value Only	\$	Mo. Payments \$	
(Complete Section 8)		Loan on Life Insurance	\$
Stocks and Bonds	\$	Mortgages on Real Estate	\$
(Describe in Section 3)		(Describe in Section 4)	
Real Estate	\$	Unpaid Taxes	\$
(Describe in Section 4)		(Describe in Section 6)	
Automobiles - Total Present Value	\$	Other Liabilities	\$
(Describe in Section 5, and include		(Describe in Section 7)	
Year/Make/Model)		Total Liabilities	\$
Other Personal Property	\$	Net Worth	\$
(Describe in Section 5)			
Other Assets	\$		
(Describe in Section 5)			
Total	\$	Total	\$

Section 1. Source of Income	Contingent Liabilities
Salary	As Endorser or Co-Maker
Net Investment Income	Legal Claims & Judgments
Real Estate Income	Provision for Federal Income Tax
Other Income (Describe below)*	Other Special Debt

Description of Other Income in Section 1.

*Alimony or child support payments need not be disclosed in "Other Income" unless it is desired to have such payments counted toward total income.

Section 2. Notes Payable to Banks and Others. (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.)

Name and Address of Noteholder(s)	Original Balance	Current Balance	Payment Amount	Frequency (monthly, etc.)	How Secured or Endorsed Type of Collateral

Section 3. Stocks and Bonds. (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed).

Number of Shares	Name of Securities	Cost	Market Value Quotation/Exchange	Date of Quotation/Exchange	Total Value

Section 4. Real Estate Owned.

(List each parcel separately. Use attachment if necessary. Each attachment must be identified as a part of this statement and signed.)

	Property A	Property B	Property C
Type of Real Estate (e.g. Primary Residence, Other Residence, Rental Property, Land, etc.)			
Address			
Date Purchased			
Original Cost			
Present Market Value			
Name & Address of Mortgage Holder			
Mortgage Account Number			
Mortgage Balance			
Amount of Payment per Month/ Year			
Status of Mortgage			

Section 5. Other Personal Property and Other Assets. (Describe, and if any is pledged as security, state name and address of lien holder, amount of lien, terms of payment and if delinquent, describe delinquency)

Section 6. Unpaid Taxes. (Describe in detail, as to type, to whom payable, when due, amount, and to what property, if any, a tax lien attaches.)

Section 7. Other Liabilities. (Describe in detail.)

Section 8. Life Insurance Held. (Give face amount and cash surrender value of policies - name of insurance company and beneficiaries)

I authorize SBA/Lender to make inquiries as necessary to verify the accuracy of the statements made and to determine my creditworthiness.

CERTIFICATION: (to be completed by each person submitting the information requested on this form)

By signing this form, I certify under penalty of criminal prosecution that all information on this form and any additional supporting information submitted with this form is true and complete to the best of my knowledge. I understand that SBA or its participating Lenders, or Certified Development Companies will rely on this information when making decisions regarding an application for a loan from SBA or an SBA Participating Lender, or for participation in the SBA 8(a) Business Development (BD) program.

Signature _____

Date _____

Print Name _____

Social Security No. _____

Signature _____

Date _____

Print Name _____

Social Security No. _____

NOTICE TO LOAN APPLICANTS: CRIMINAL PENALTIES AND ADMINISTRATIVE REMEDIES FOR FALSE STATEMENTS:

Knowingly making a false statement on this form is a violation of Federal law and could result in criminal prosecution, significant civil penalties, and a denial of your loan. A false statement is punishable under 18 U.S.C. §§ 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 U.S.C. § 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a Federally insured institution, a false statement is punishable under 18 U.S.C. § 1014 by imprisonment of not more than 30 years and/or a fine of not more than \$1,000,000.

NOTICE TO APPLICANTS OR PARTICIPANTS IN THE 8(a) BD PROGRAM: CRIMINAL PENALTIES AND ADMINISTRATIVE REMEDIES FOR FALSE STATEMENTS:

Any person who misrepresents a business concern's status as an 8(a) Program participant or SDB concern, or makes any other false statement in order to influence the 8(a) certification or other review process in any way (e.g., annual review, eligibility review), shall be: (1) Subject to fines and imprisonment of up to 5 years, or both, as stated in Title 18 U.S.C. § 1001; (2) subject to fines of up to \$500,000 or imprisonment of up to 10 years, or both, as stated in Title 15 U.S.C. § 645; (3) Subject to civil and administrative remedies, including suspension and debarment; and (4) Ineligible for participation in programs conducted under the authority of the Small Business Act.

PLEASE NOTE: The estimated average burden hours for the completion of this form is 1.5 hours per response. If you have questions or comments concerning this estimate or any other aspect of this information, please contact Chief, Administrative Branch, U.S. Small Business Administration, Washington, D.C. 20416, and Clearance Officer, Paper Reduction Project (3245-0188), Office of Management and Budget, Washington, D.C. 20503. **PLEASE DO NOT SEND FORMS TO OMB.**

Business Name: _____

Name: _____

Business Phone: _____

I hereby swear under penalty of law that all statements made in this Personal Financial Statement are true.

I authorize the Kentucky Transportation Cabinet to make inquiries regarding the information provided in this Personal Financial Statement as necessary to determine if I am an eligible economically disadvantaged individual/owner of the applicant or certified firm (see 49 CFR 26.67).

I agree to hold the certifying agency harmless for any claim arising out of this Personal Financial Statement. I agree to indemnify the agency for any liability in connection with the certification of the applicant.

Signature of Applicant

Date

Printed Name

(Notary Seal)

STATE OF _____

COUNTY OF _____

SUBSCRIBED AND SWORN TO BEFORE ME ON THIS THE _____ DAY OF _____, 20____

Notary Public _____

My Commission Expires _____

The Personal Net Worth Statement must be notarized.

Federal Register

The following pages include the final rules for 49 CFR Part 26 and 49 CFR Part 23 as found in the Federal Register. These are the most up-to-date suggested changes to the federal regulations.

To view the regulations in full, please visit the following websites:

49 CFR Part 26

www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl

49 CFR Part 23

www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr23_main_02.tpl

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map Date	Date certain federal assistance no longer available in SFHAs
Taft, Town of, Muskogee County	400128	June 26, 1976, Emerg; August 25, 1987, Reg; February 4, 2011, Susp.	.....do*	Do.
Wainwright, Town of, Muskogee County	400129	March 9, 1976, Emerg; August 8, 1978, Reg; February 4, 2011, Susp.	.....do*	Do.
Warner, Town of, Muskogee County	400130	December 29, 1976, Emerg; May 25, 1978, Reg; February 4, 2011, Susp.	.....do*	Do.
Webbers Falls, Town of, Muskogee County.	400131	November 28, 1975, Emerg; May 1, 1980, Reg; February 4, 2011, Susp.	.....do*	Do.
Texas:				
Bandera County, Unincorporated Areas	480020	January 21, 1974, Emerg; November 1, 1978, Reg; February 4, 2011, Susp.	.....do*	Do.
Benavides, City of, Duval County	480792	July 24, 1975, Emerg; March 4, 1986, Reg; February 4, 2011, Susp.	.....do*	Do.
Colorado County, WCID Number 2	481489	October 28, 1977, Emerg; June 1, 1988, Reg; February 4, 2011, Susp.	.....do*	Do.
Colorado County, Unincorporated Areas	480144	February 29, 1980, Emerg; September 19, 1990, Reg; February 4, 2011, Susp.	.....do*	Do.
Columbus, City of, Colorado County	480145	February 19, 1975, Emerg; June 19, 1985, Reg; February 4, 2011, Susp.	.....do*	Do.
Duval County, Unincorporated Areas	480202	July 24, 1975, Emerg; May 1, 1987, Reg; February 4, 2011, Susp.	.....do*	Do.
Eagle Lake, City of, Colorado County ...	480146	July 30, 1975, Emerg; April 1, 1987, Reg; February 4, 2011, Susp.	.....do*	Do.
Lamesa, City of, Dawson County	480191	February 25, 1972, Emerg; April 30, 1976, Reg; February 4, 2011, Susp.	.....do*	Do.
San Diego, City of, Duval and Jim Wells Counties.	481199	December 26, 1975, Emerg; March 1, 1987, Reg; February 4, 2011, Susp.	.....do*	Do.

*-do- = Ditto.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: January 19, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation.

[FR Doc. 2011-1930 Filed 1-27-11; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 26

[Docket No. OST-2010-0118]

RIN 2105-AD75

Disadvantaged Business Enterprise: Program Improvements

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Final rule.

SUMMARY: This rule improves the administration of the Disadvantaged Business Enterprise (DBE) program by increasing accountability for recipients with respect to meeting overall goals, modifying and updating certification requirements, adjusting the personal net worth (PNW) threshold for inflation, providing for expedited interstate certification, adding provisions to foster small business participation, improving

post-award oversight, and addressing other issues.

DATES: Effective Dates: This rule is effective February 28, 2011.

FOR FURTHER INFORMATION CONTACT:

Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, Room W94-302, 202-366-9310, bob.ashby@dot.gov.

SUPPLEMENTARY INFORMATION: The Department of Transportation issued an advance notice of proposed rulemaking (ANPRM) concerning several DBE program issues on April 8, 2009 (74 FR 15904). The first issue raised in the ANPRM concerned counting of items obtained by a DBE subcontractor from its prime contractor. The second concerned ways of encouraging the “unbundling” of contracts to facilitate participation by small businesses, including DBEs. The third was a request for comments on potential improvements to the DBE application form and personal net worth (PNW) form. The fourth asked for suggestions related to program oversight. The fifth concerned potential regulatory action to facilitate certification for firms seeking to work as DBEs in more than one state.

The sixth concerned additional limitations on the discretion of prime contractors to terminate DBEs for convenience, once the prime contractor had committed to using the DBE as part of its showing of good faith efforts. The Department received approximately 30 comment letters regarding these issues.

On May 10, 2010, the Department issued a notice of proposed rulemaking (NPRM) seeking further comment on proposals based on the ANPRM and proposing new provisions (75 FR 25815). The NPRM proposed an inflationary adjustment of the PNW cap to \$1.31 million, the figure that would result from proposed Federal Aviation Administration (FAA) reauthorization legislation then pending in both Houses of Congress. The Department proposed additional measures to hold recipients accountable for their performance in achieving DBE overall goals.

The NPRM also proposed amendments to the certification-related provisions of the DBE regulation. Those proposals resulted from the Department's experience dealing with certification issues and certification appeal cases during the years since the last major revision of the DBE rule in 1999. The proposed amendments were intended to clarify issues that have arisen and avoid problems with which

recipients (*i.e.*, state highway agencies, transit authorities, and airport sponsors who receive DOT grant financial assistance) and the Department have had to grapple over the last 11 years.

The Department received approximately 160 comments on the NPRM from a variety of interested parties, including DBE and non-DBE firms, associations representing them, and recipients of DOT financial assistance. A summary of comments on the major issues in the rulemaking, and the Department's responses to those comments, follows.

Counting Purchases From Prime Contractors

Under current counting rules, a DBE subcontractor and its prime contractor may count for DBE credit the entire cost of a construction contract, including items that the DBE subcontractor purchases or leases from a third party (*e.g.*, in a so-called "furnish and install" contract). There is an exception to this general rule: A DBE and its prime contractor may not count toward goals items that the DBE purchases or leases from its own prime contractor. The reason for this provision is that doing so would allow the prime contractor to count for DBE credit items that it produced itself.

As noted in the ANPRM, one DBE subcontractor and a number of prime contractors objected to this approach, saying that it unfairly denies a DBE in this situation the opportunity to count credit for items it has obtained from its prime contractor rather than from other sources. Especially in situations in which a commodity might only be available from a single source—a prime contractor or its affiliate—the rule would create a hardship, according to proponents of this view. The ANPRM proposed four options (1) keeping the rule as is; (2) keeping the basic rule as is, but allowing recipients to make exceptions in some cases; (3) allowing DBEs to count items purchased from any third party source, including the DBE's prime contractor; and (4) not allowing any items obtained from any non-DBE third party to be counted for DBE credit. Comment was divided among the four alternatives, which each garnering some support. For purposes of the NPRM, the Department decided not to propose any change from the current rule.

Comment on the issue was again divided. Seven commenters favored allowing items obtained from any source to be counted for credit, including the firm that was the original proponent of the idea and another DBE, two prime contractors' associations, a

prime contractor, and two State Departments of Transportation (DOTs). These commenters generally made the same arguments as had proponents of this view at the ANPRM stage. Thirteen commenters, among which were several recipients, a DBE contractors' association, and DBE contractors, favored the NPRM's proposed approach of not making any change to the existing rule, and they endorsed the NPRM's rationale. Sixteen commenters, including a recipient association and a number of DBE companies, supported disallowing credit for any items purchased or leased from a non-DBE source. They believed that this approach supported the general principle of awarding DBE credit only for contributions that DBEs themselves make on a contract.

DOT Response

The Department remains unconvinced that it is appropriate for a prime contractor to produce an item (*e.g.*, asphalt), provide it to its own DBE subcontractor, and then count the value of the item toward its good faith efforts to meet DBE goals. The item—asphalt, in this example—is a contribution to the project made by the prime contractor itself and simply passed through the DBE. That is, the prime contractor, on paper, sells the item to the DBE, who then charges the cost of the item it just bought from the prime contractor as part of its subcontract price, which the prime then reports as DBE participation. In the Department's view, this pass-through relationship is inconsistent with the most important principle of counting DBE participation, which is that credit should only be counted for value that is added to the transaction by the DBE itself.

As mentioned in the ANPRM and NPRM, the current rule treats counting of items purchased by DBEs from non-DBE sources differently, depending on whether the items are obtained from the DBE's prime contractor or from a third-party source. The Department's current approach is a reasonable compromise between the commonly accepted practice of obtaining items from non-DBE sources as part of the contracting process and maintaining the principle of counting only the DBE's own contributions for credit toward goals, which is most seriously violated when the prime contractor itself is the source of the items. This compromise respects the dual, somewhat divergent, goals of accommodating a common way of doing business and avoiding a too-close relationship between a prime contractor and a DBE subcontractor that distorts the counting of credit toward DBE goals.

This compromise has been part of the regulation since 1999 and, with the exception of the proponent of changing the regulation and its prime contractor partners, has never been raised by program participants as a widespread problem requiring regulatory change. For these reasons, the Department will leave the existing regulatory language intact.

Terminations of DBE Firms

The NPRM proposed that a prime contractor who, in the course of meeting its good faith efforts requirements on a procurement involving a contract goal, had submitted the names of one or more DBEs to work on the project, could not terminate a DBE firm without the written consent of the recipient. The firm could be terminated only for good cause. The NPRM proposed a list of what constituted good cause for this purpose.

Over 40 comments addressed this subject, a significant majority of which supported the proposal. Two recipients said the proposal was unnecessary and a third expressed concern about workload implications. Several recipients said that they already followed this practice.

However, commenters made a variety of suggestions with respect to the details of the proposal. A DBE firm questioned a good cause element that would allow a firm to be terminated for not meeting reasonable bonding requirements, noting that lack of access to bonding is a serious problem for many DBEs. A DBE contractors' association said that a DBE's action to halt performance should not necessarily be a ground for termination, because in some cases such an action could be a justified response to an action beyond its control (*e.g.*, the prime failing to make timely payments). A DBE requested clarification of what being "not responsible" meant in this context. A number of commenters, including recipients and DBEs, suggested that a prime could terminate a DBE only if the DBE "unreasonably" failed to perform or follow instructions from the prime.

A prime contractors' association suggested additional grounds for good cause to terminate, including not performing to schedule or not performing a commercially useful function. Another such association said the rule should be consistent with normal business practices and not impede a prime contractor's ability to remove a poorly performing subcontractor for good cause. A recipient wanted a public safety exception to the time frame for a DBE's reply to a prime contractor's notice

proposing termination, and another recipient wanted to shorten that period from five to two days. A State unified certification program (UCP) suggested adopting its State's list of good cause reasons, and a consultant suggested that contracting officers, not just the DBE Liaison Officer (DBELO), should be involved in the decision about whether to concur in a prime contractor's desire to terminate a DBE. A recipient wanted to add language concerning the prime contractor's obligation to make good faith efforts to replace a terminated DBE with another DBE.

DOT Response

The Department, like the majority of commenters on this issue, believes that the proposed amendment will help to prevent situations in which a DBE subcontractor, to which a prime contractor has committed work, is arbitrarily dismissed from the project by the prime contractor. Comments to the docket and in the earlier stakeholder sessions have underlined that this has been a persistent problem. By specifying that a DBE can be terminated only for good cause—not simply for the convenience of the prime contractor—and with the written consent of the recipient, this amendment should help to end this abuse.

With respect to the kinds of situations in which “good cause” for termination can exist, the Department has modified the language of the rule to say that good cause includes a situation where the DBE subcontractor has failed or refused to perform the work of its subcontract in accordance with normal industry standards. We note that industry standards may vary among projects, and could be higher for some projects than others, a matter the recipient could take into account in determining whether to consent to a prime contractor's proposal to terminate a DBE firm. However, good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor (*e.g.*, the failure of the prime contractor to make timely payments or the unnecessary placing of obstacles in the path of the DBE's work).

Good cause also does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that it can self-perform the work in question or substitute another DBE or non-DBE firm. This approach responds to commenters who were concerned about prime contractors imposing unreasonable demands on DBE subcontractors while offering recipients a more definite standard than simple

reasonableness in deciding whether to approve a prime contractor's proposal to terminate a DBE firm. We have also adopted a recipient's suggestion to permit the time frame for the process to be shortened in a case where public necessity (*e.g.*, safety) requires a shorter period of time before the recipient's decision.

In addition to the enumerated grounds, a recipient may permit a prime contractor to terminate a DBE for “other documented good cause that the recipient determines compels the termination of the DBE subcontractor.” This means that the recipient must document the basis for any such determination, and the prime contractor's reasons for terminating the DBE subcontractor make the termination essential, not merely discretionary or advantageous. While the recipient need not obtain DOT operating administration concurrence for such a decision, FHWA, FTA, and FAA retain the right to oversee such determinations by recipients.

Personal Net Worth

The NPRM proposed to make an inflationary adjustment in the personal net worth (PNW) cap from its present \$750,000 to \$1.31 million, based on the consumer price index (CPI) and relating back to 1989, as proposed in FAA authorization bills pending in Congress. The NPRM noted that such an adjustment had long been sought by DBE groups and that it maintained the status quo in real dollar terms. The Department also asked for comment on the issue of whether assets counted toward the PNW calculation should continue to include retirement savings products. The rule currently does include them, but the pending FAA legislation would move in the direction of excluding them from the calculation.

Of the 95 commenters who addressed the basic issue of whether the Department should make the proposed inflationary adjustment, 71—representing all categories of commenters—favored doing so. Many said that such an adjustment was long overdue and that it would mitigate the problem of a “glass ceiling” limiting the growth and development of DBE firms. A few commenters said that such adjustments should be done regionally or locally rather than nationally, to reflect economic differences among areas of the country. A number of the commenters wanted to make sure the Department made similar adjustments annually in the future. A member of Congress suggested that the PNW should be increased to \$2.5 million, while a few recipients favored a smaller

increase (*e.g.*, to \$1 million). A few commenters also suggested that the Department explore some method of adjusting PNW other than the CPI, but they generally did not spell out what the alternative approaches might be.

The opponents of making the adjustment, mostly recipients and DBEs, made several arguments. The first was that \$1.31 million was too high and would include businesses owners who were not truly disadvantaged. The second was that raising the PNW number would favor larger, established, richer DBEs at the expense of smaller, start-up firms. These larger companies could then stay in the program longer, to the detriment of the program's aims. Some commenters said that the experience in their states was that very few firms were becoming ineligible for PNW reasons, suggesting that a change in the current standard was unnecessary.

With respect to the issue of retirement assets, about 28 comments, primarily from DBE groups and recipients, favored excluding some retirement assets from the PNW calculation, often asserting that this was appropriate because such funds are illiquid and not readily available to contribute toward the owners' businesses. Following this logic, some of the comments said that Federally-regulated illiquid retirement plans (*e.g.*, 401k, Roth IRA, Keough, and Deferred Compensation plans, as well as 529 college savings plans) be excluded while other assets that are more liquid (CDs, savings accounts) be counted, even if said to be for retirement purposes. A number of these commenters said that a monetary cap on the amount that could be excluded (*e.g.*, \$500,000) would be acceptable.

The 17 comments opposing excluding retirement accounts from the PNW calculation generally supported the rationale of the existing regulation, which is that assets of this kind, even if illiquid, should be regarded as part of an individual's wealth for PNW purposes. A few commenters also said that, since it is most likely wealthier DBE owners who have such retirement accounts, excluding them would help these more established DBEs at the expense of smaller DBEs who are less likely to be able to afford significant retirement savings products. Again, commenters said that this provision, by effectively raising the PNW cap, would inappropriately allow larger firms to stay in the program longer. Some of the commenters would accept exclusion of retirement accounts if an appropriate cap were put in place, however.

Finally, several commenters asked for a revised and improved PNW form with

additional guidance and instructions on how to make PNW calculations (*e.g.*, with respect to determining the value of a house or business).

DOT Response

To understand the purpose and effect of the Department's proposal to change the PNW threshold from the long-standing \$750,000 figure, it is important to keep in mind what an inflationary adjustment does. (Because of the passage of time from the issuance of the NPRM to the present time, the amount of the inflationary adjustment has changed slightly, from \$1.31 million to \$1.32 million.) The final rule's adjustment is based on the Department of Labor's consumer price index (CPI) calculator. This calculator was used because, of various readily available means of indexing for inflation, CPI appears to be the one that is most nearly relevant to an individual's personal wealth. Such an adjustment simply keeps things as they were originally in real dollar terms.

That is, in 1989, \$750,000 bought a certain amount of goods and services. In 2010, given the effects of inflation over 21 years, it would take \$1.32 million in today's dollars to buy the same amount of goods and services. The buying power of assets totaling \$750,000 in 1989 is the same as the buying power of assets totaling \$1.32 million in 2010. Notwithstanding the fact that \$1.32 million, on its face, is a higher number than \$750,000, the wealth of someone with \$1.32 million in assets today is the same, in real dollar or buying power terms, as that of someone with \$750,000 in 1989.

Put another way, if the Department did not adjust the \$750,000 number for inflation, our inaction would have the effect of establishing a significantly lower PNW cap in real dollar terms. A PNW cap of \$750,000 in 2010 dollars is equivalent to a PNW cap of approximately \$425,700 in 1989 dollars. This means that a DBE applicant today would be allowed to have \$325,000 less in real dollar assets than his or her counterpart in 1989.

The Department believes, in light of this understanding of an inflationary adjustment, that making the proposed adjustment at this time is appropriate. This is a judgment that is shared by the majority of commenters and both Houses of Congress. We do not believe that any important policy interest is served by continuing to lower the real dollar PNW threshold, which we believe would have the effect of further limiting the pool of eligible DBE owners beyond what is intended by the Department in adopting the PNW standard.

The Department is using 1989 as the base year for its inflationary adjustment for two reasons. First, doing so is consistent with what both the House and Senate determined was appropriate in the context of FAA authorization bills that both chambers passed. Second, while the Department adopted a PNW standard in 1999, the standard itself, which was adopted by the Small Business Administration (SBA) before 1989, has never been adjusted for inflation at any time. By 1999, the real dollar value of the original \$750,000 standard had already been eroded by inflation, and the Department believes that it is reasonable to take into account the effect of inflation on the standard that occurred before as well as after the Department adopted it.

We appreciate the concerns of commenters who opposed the proposed inflationary adjustment. Some of these commenters, it appears, may not have fully understood that an inflationary adjustment simply maintains the status quo in real dollar terms. The concern that making the adjustment would favor larger, established DBEs over smaller, start-up companies has some basis, and reflects the longstanding tension in the program between its role as an incubator for new firms and its purpose of allowing DBE firms to grow and develop to the point where they may be in a better position to compete for work outside the DBE program. Allowing persons with larger facial amounts of assets may seem to permit participation of people who are less disadvantaged than formerly in the program, but disadvantage in the DBE program has always properly been understood as relative disadvantage (*i.e.*, relative to owners and businesses in the economy generally), not absolute deprivation. People who own successful businesses are more affluent, by and large, than many people who participate in the economy only as employees, but this does not negate the fact that socially disadvantaged persons who own businesses may well, because of the effects of discrimination, accumulate less wealth than their non-socially disadvantaged counterparts. Consequently, the concerns of opponents of this change are not sufficient to persuade us to avoid making the proposed inflationary adjustment.

We do not believe that it is practical, in terms of program administration, to have standards that vary with recipient or region. We acknowledge that one size may not fit all to perfection, but the complexity of administering a national program with a key eligibility standard that varies, perhaps significantly, among

jurisdictions would be, in our view, an even greater problem. Nor do we see a strong policy rationale for a change to some fixed figure (*e.g.*, \$1 million, \$2.5 million) that is not tied to inflation. We do agree, however, that an improved PNW form would be an asset to the program, and we will propose such a form for comment in the next stage NPRM on the DBE program, which we hope to issue in 2011. This NPRM may also continue to examine other PNW issues.

Whenever there is a change in a rule of this sort, the issue of how to handle the transition between the former rule and the new rule inevitably arises. We provide the following guidance for recipients and firms applying for DBE certification.

- For applications or decertification actions pending on the date this amendment is published, but before its effective date, recipients should make decisions based on the new standards, though these decisions should not take effect until the amendment's effective date.

- Beginning on the effective date of this amendment, all new certification decisions must be based on the revised PNW standard, even if the application was filed or a decertification action pertaining to PNW began before this date.

- If a denial of an application or decertification occurred before the publication date of this amendment, because the owner's PNW was above \$750,000 but not above \$1.32 million, and the matter is now being appealed within the recipient's or unified certification program's (UCP's) process, then the recipient or UCP should resolve the appeal using the new standard. Recipients and UCPs may request updated information where relevant. In the case of an appeal pending before the Departmental Office of Civil Rights (DOCR) under section 26.89, DOCR will take the same approach or remand the matter, as appropriate.

- If a firm was decertified or its application denied within a year before the effective date of this amendment, because the owner's PNW was above \$750,000 but not above \$1.32 million, the recipient or UCP should permit the firm to resubmit PNW information without any further waiting period, and the firm should be recertified if the owner's PNW is not over \$1.32 million and the firm is otherwise eligible.

- We view any individual who has misrepresented his or her PNW information, whether before or after the inflationary adjustment takes effect, as having failed to cooperate with the DBE

program, in violation of 49 CFR 26.109(c). In addition to other remedies that may apply to such conduct, recipients should not certify a firm that has misrepresented this information.

The Department is not ready, at this time, to make a decision on the issue of retirement assets. The comments suggested a number of detailed issues the Department should consider before proposing any specific provisions on this subject. We will further consider commenters' thoughts on this issue at a future time.

Interstate Certification

In response to longstanding concerns of DBEs and their groups, the NPRM proposed a mechanism to make interstate certification easier. The proposed mechanism did not involve pure national reciprocity (*i.e.*, in which each state would give full faith and credit to other states' certification decisions, with the result that a certification by any state would be honored nationwide). Rather, it created a rebuttable presumption that a firm certified in its home state would be certified in other states. A firm certified in home state A could take its application materials to State B. Within 30 days, State B would decide either to accept State A's certification or object to it. If it did not object, the firm would be certified in State B. If State B did object, the firm would be entitled to a proceeding in which State B bore the burden of proof to demonstrate that the firm should not be certified in State B. The NPRM also proposed that the DOT Departmental Office of Civil Rights (DOCR) would create a database that would be populated with denials and decertifications, which the various State UCPs would check with respect to applicants and currently certified firms.

This issue was one of the most frequently commented-upon subjects in the rulemaking. Over 30 comments, from a variety of sources including DBEs, DBE organizations, and a prime contractors' association. Members of Congress and others supported the proposed approach. They emphasized that the necessity for repeated certification applications to various UCPs, and the very real possibility of inconsistent results on the same facts, were time-consuming, burdensome, and costly for DBEs. In a national program, they said, there should be national criteria, uniformity of forms and interpretations, and more consistent training of certification personnel. The proposed approach, they said, while not ideal, would be a useful step toward those goals.

An approximately equal number of commenters, predominantly recipients but also including some DBEs and associations, opposed the proposal, preferring to keep the existing rules (under which recipients can, but are not required to, accept certifications made by other recipients) in place. Many of these commenters said that their certification programs frequently had to reject out-of-state firms that had been certified by their home states because the home states had not done a good job of vetting the qualifications of the firms for certification. They asserted that there was too much variation among states concerning applicable laws and regulations (*e.g.*, with respect to business licensing or marital property laws), interpretations of the DBE rule, forms and procedures, and the training of certifying agency personnel for something like the NPRM proposal to work well. Before going to something like the NPRM proposal, some of these commenters said, DOT should do more to ensure uniform national training, interpretations, forms etc.

Commenters opposed to the NPRM proposal were concerned that the integrity of the program would be compromised, as questionable firms certified by one state would slip into the directories of other states without adequate vetting. Moreover, the number of certification actions each state had to consider, and the number of certified firms that each state would have to manage, could increase significantly, straining already scarce resources.

A smaller number of commenters addressed the idea of national reciprocity. Some of these commenters said that, at least for the future, national reciprocity was a valuable goal to work toward. Some of these commenters, including an association that performs certification reviews nationally for MBE and WBE suppliers (albeit without on-site reviews) and a Member of Congress, supported using such a model now. On the other hand, other commenters believed national reciprocity was an idea whose time had not come, for many of the same reasons stated by commenters opposed to the NPRM proposal. Some of the commenters on the NPRM proposal said that the proposal would result in *de facto* national reciprocity, which they believed was bad for the program.

Two features of the NPRM proposal attracted considerable adverse comment. Thirty-one of the 34 comments addressing the proposed 30-day window for "State B" to decide whether to object to a home state certification of a firm said that the proposed time was too short. These

commenters, mostly recipients, suggested time frames ranging from 45–90 days. They said that the 30-day time frame would be very difficult to meet, given their resources, and would cause States to accept questionable certifications from other States simply because there was insufficient time to review the documentation they had been given. Moreover, the 30-day window would mean that out-of-state firms would jump to the front of the line for consideration over in-state firms, concerning which the rule allows 90 days for certification. This would be unfair to in-state firms, they said.

In addition, 22 of 28 commenters on the issue of the burden of proof for interstate certification—again, predominantly recipients—said that it was the out-of-state applicant firm, rather than State B, that should have the burden of proof once State B objected to a home state certification of the firm. These commenters also said that it was more sensible to put the out-of-state firm in the same position as any other applicant for certification by having to demonstrate to the certifying agency that it was eligible, rather than placing the certification agency in the position of the proponent in a decertification action for a firm that it had previously certified. Again, commenters said, the NPRM proposal would favor out-of-state over in-state applicants.

A few comments suggested trying reciprocal certification on a regional basis (*e.g.*, in the 10 Federal regions) before moving to a more national approach. Others suggested that only recent information (*e.g.*, applications and on-site reports less than three years old) be acceptable for interstate certification purposes. Some states pointed to state laws requiring local licenses or registration before a firm could do business in the State: Some commenters favored limiting out-of-state applications to those firms that had obtained the necessary permits, while one commenter suggested prohibiting States from imposing such requirements prior to DBE certification. Some comments suggested limiting the grounds on which State B could object to the home state certification of a firm (*i.e.*, "good cause" rather than "interpretive differences," differences in state law, evidence of fraud in obtaining home state certification).

There was a variety of other comments relevant to the issue of interstate certification. Most commenters who addressed the idea of the DOCR database supported it, though some said that denial/decertification data should be available only to certification agencies, not the general

public. Some also said that having to input and repeatedly check the data base would be burdensome. One commenter suggested including a firm's Federal Taxpayer ID number in the database entry. One commenter suggested a larger role for the database: Applicants should electronically input their application materials to the database, which would then be available to all certifying agencies, making individual submissions of application information to the States unnecessary. Some commenters wanted DOT to create or lead a national training and/or accreditation effort for certifier personnel.

DOT Response

Commenters on interstate were almost evenly divided on the best course of action for the Department to take. Most DBEs favored making interstate certification less difficult for firms that wanted to work outside their home states; most recipients took the opposite point of view. This disagreement reflects, we believe, a tension between two fundamental objectives of the program. On one hand, it is important to facilitate the entry of DBE firms into this national program, so that they can compete for DOT-assisted contracting wherever those opportunities exist, while reducing administrative burdens and costs on the small businesses that seek to participate. On the other hand, it is important to maintain the integrity of the program, so that only eligible firms participate and ineligible firms do not take unfair advantage of the program.

The main concern of proponents of the NPRM proposal was that failing to make changes to facilitate interstate certification would leave in place unnecessary and unreasonable barriers to the participation of firms outside of their home states. The main concern of opponents of the NPRM proposal was that making the proposed changes would negatively affect program integrity. Their comments suggest that there is considerable mistrust among certification agencies and programs. Many commenters appear to believe that, while their own certification programs do a good job, other states' certification programs do not. Much of the opposition to facilitating interstate certification appears to have arisen from this mistrust, as certification agencies seek to prevent questionable firms certified by what they perceive as weak certification programs in other states from infiltrating their domains.

The Department does not believe that it is constructive to take the position that certification programs nationwide

are so hopelessly inadequate that the best response is to leave interstate barriers in place to contain the perceived contagion of poorly qualified, albeit certified, firms within the boundaries of their own states. To the contrary, we believe that, under a system like that proposed in the NPRM, if firms certified by State A are regularly rebuffed by States B, C, D, etc., State A firms will have an incentive to bring pressure on their certification agency to improve its performance.

The Department also believes that suggestions made by commenters, such as improving training and standardizing forms and interpretations, can improve the performance of certification agencies generally. In the follow-on NPRM the Department hopes to issue in 2011, one of the subjects we will address is improvements in the certification application and PNW forms, which certification agencies then would be required to use without alteration. DOT already provides many training opportunities to certification personnel, such as the National Transportation Institute courses provided by the Federal Transit Administration, presentations by knowledgeable DOT DBE staff at meetings of transportation organizations, and webinars and other training opportunities provided by Departmental Office of Civil Rights personnel. The Department will consider further ways of fostering training and education for certifiers (e.g., a DOT-provided web-based training course for certifiers). The Department also produces guidance on certification-related issues to assist certifiers in making decisions that are consistent with this regulation, and we will continue that practice.

While we will continue to work with our state and local partners to improve the certification process, we do not believe that steps to facilitate interstate certification should be taken only after all recipients achieve an optimal level of performance. The DBE program is a national program; administrative barriers to participation impair the important program objective of encouraging DBE firms to compete for business opportunities; provisions to facilitate interstate certification can be drafted in a way that permits "State B" to screen out firms that are not eligible in accordance with this regulation. Consequently, the Department has decided to proceed with a modified form of the NPRM proposal. However, the final rule will not make compliance with the new section 26.85 mandatory until January 1, 2012, in order to provide additional time for recipients and UCPs to take advantage of training

opportunities and to establish any needed administrative mechanisms to carry out the new provision. This will also provide time for DOCR to make its database for denials and decertifications operational.

As under the NPRM, a firm certified in its home state would present its certification application package to State B. In response to commenters' concerns about the time available, State B would have 60 days, rather than 30 as in the NPRM, to determine whether it had specific objections to the firm's eligibility and to communicate those objections to the firm. If State B believed that the firm was ineligible, State B would state, with particularity, the specific reasons or objections to the firm's eligibility. The firm would then have the opportunity to respond and to present information and arguments to State B concerning the specific objections that State B had made. This could be done in writing, at an in-person meeting with State B's decision maker, or both. Again in response to commenters' concerns, the firm, rather than State B, would have the burden of proof with respect, and only with respect, to the specific issues raised by State B's objections. We believe that these changes will enhance the ability of certification agencies to protect the integrity of the program while also enhancing firms' ability to pursue business opportunities outside their home states.

We emphasize that State B's objections must be specific, so that the firm can respond with information and arguments focused clearly on the particular issues State B has identified, rather than having to make an unnecessarily broad presentation. It is not enough for State B to say "the firm is not controlled by its disadvantaged owner" or "the owner exceeds the PNW cap." These are conclusions, not specific, fact-based objections. Rather, State B might say "the disadvantaged owner has a full-time job with another organization and has not shown that he has sufficient time to exercise control over the day-to-day operations of the firm" or "the owner's property interests in assets X, Y, and Z were improperly valued and cause his PNW to exceed \$1.32 million." This degree of specificity is mandatory regardless of the regulatory ground (e.g., new information, factual errors in State A's certification: See section 26.85(d)(2)) on which State B makes an objection. For example, if State B objected to the firm's State A certification on the basis that State B's law required a different result, State B would say something like "State B Revised Statutes Section xx.yyyy

provides only that a registered engineer has the power to control an engineering firm in State B, and the disadvantaged owner of the firm is not a registered engineer, who is therefore by law precluded from controlling the firm in State B."

On receiving this specific objection, the owner of the firm would have the burden of proof that he or she does meet the applicable requirements of Part 26. In the first example above, the owner would have to show that either he or she does not now have a full-time job elsewhere or that, despite the demands of the other job, he or she can and does control the day-to-day operations of the firm seeking certification. This burden would be to make the required demonstration by a preponderance of the evidence, the same standard used for initial certification actions generally. This owner would not bear any burden of proof with respect to size, disadvantage, ownership, or other aspects of control, none of which would be at issue in the proceeding. The proceeding, and the firm's burden of proof, would concern only matters about which State B had made a particularized, specific objection. This narrowing of the issues should save time and resources for firms and certification agencies alike.

The firm's response to State B's particularized objections could be in writing and/or in the form of an in-person meeting with State B's decision maker to discuss State B's objections to the firm's eligibility. The decision maker would have to be someone who is knowledgeable about the eligibility provisions of the DBE rule.

We recognize that, in unusual circumstances, the information the firm provided to State B in response to State B's specific objections could contain new information, not part of the original record, that could form the basis for an additional objection to the firm's certification. In such a case, State B would immediately notify the firm of the new objection and offer the firm a prompt opportunity to respond.

Section 26.85(d)(2) of the final rule lists the grounds a State B can rely upon to object to a State A certification of a firm. These are largely the same as in the NPRM. In response to a comment, the Department cautions that by saying that a ground for objection is that State A's certification is inconsistent with this regulation, we do not intend for mere interpretive disagreements about the meaning of a regulatory provision to form a ground for objection. Rather, State B would have to cite something in State A's certification that contradicted

a provision in the regulatory text of Part 26.

The final rule also gives, as a ground for objecting to a State A certification, that a State B law "requires" a result different from the law of State (see the engineering example above). To form the basis for an objection on this ground, a difference between state laws must be outcome-determinative with respect to a certification. For example, State A may treat marital property as jointly held property, while State B is a community property state. The laws are different, but both, in a given case, may well result in each spouse having a 50 percent share of marital assets. This would not form the basis for a State B objection.

With respect to state requirements for business licenses, the Department believes that states should not erect a "Catch 22" to prevent DBE firms from other states from becoming certified. That is, if a firm from State A wants to do business in State B as a DBE, it is unlikely to want to pay a fee to State B for a business license before it knows whether it will be certified. Making the firm get the business license and pay the fee before the certification process takes place would be an unnecessary barrier to the firm's participation that would be contrary to this regulation.

The Department believes that regional certification consortia, or reciprocity agreements among states in a region, are a very good idea, and we anticipate working with UCPs in the future to help create such arrangements. Among other things, the experience of actually working together could help to mitigate the current mistrust among certification agencies. However, we do not believe it would be appropriate to mandate such arrangements at this time.

The Department believes that the DOCR database of decertification and denial actions would be of great use in the certification process. However, the system is not yet up and running. Consequently, the final rule includes a one-year delay in the implementation date of requirements for use of the database.

Other Certification-Related Issues

The NPRM asked for comment on whether there should be a requirement for periodic certification reviews and/or updates of on-site reviews concerning certified firms. The interval most frequently mentioned by commenters on this subject was five years, though there was also some support for three-, six-, and seven-year intervals. A number of commenters suggested that such reviews should include an on-site update only when the firm's circumstances had

changed materially, in order to avoid burdening the limited resources of certifying agencies. Having a standardized on-site review form would reduce burdens, some commenters suggested. Other commenters suggested that the timing of reviews should be left to certifying agencies' discretion, or that on-site updates should be done on a random basis of a smaller number of firms.

The NPRM also asked about the handling of situations where an applicant withdraws its application before the certifying agency makes a decision. Should certifying agencies be able to apply the waiting period (e.g., six or 12 months) used for reapplications after denials in this situation? Comments on this issue, mostly from recipients but also from some DBEs and their associations, were divided. Some commenters said that there were often good reasons for a firm to withdraw and correct an application (e.g., a new firm unaccustomed to the certification process) and that their experience did not suggest that a lot of firms tried to game the system through repeated withdrawals. On the other hand, some commenters said that having to repeatedly process withdrawn and resubmitted applications was a burden on their resources that they would want to mitigate through applying a reapplication waiting period. One recipient said that, even in the absence of a waiting period, the resubmitted application should go to the back of the line for processing. Still others wanted to be able to apply case-by-case discretion concerning whether to impose a waiting period on a particular firm. A few commenters suggested middle-ground positions, such as imposing a shorter waiting period (e.g., 90 days) than that imposed on firms who are denied or applying a waiting period only for a second or subsequent withdrawal and reapplication by the same firm.

Generally, commenters were supportive of the various detail-level certification provision changes proposed in the NPRM (e.g., basing certification decisions on current circumstances of a firm). Commenters did speak to a wide variety of certification issues, however. One commenter said that in its state, the UCP arbitrarily limited the number of NAICS codes in which a firm could be certified, a practice the commenter said the regulation should forbid. In addition, this commenter said, the UCP inappropriately limited certification of professional services firms owned by someone who was not a licensed professional in a field, even in the

absence of a state law requiring such licensure. A number of commenters said that recipients should not have to automatically certify SBA-certified 8(a) firms, while another commenter recommended reviving the now-lapsed DOT-SBA memorandum of understanding (MOU) on certification issues. A DBE association said that certifying agencies should not count against firms seeking certification (e.g., with respect to independence determinations) investments from or relationships with larger firms that are permitted under other Federal programs (e.g., HubZone or other SBA programs). One commenter favored, and another opposed, allowing States to use their own business specialty classifications in addition to or in lieu of NAICS codes.

One recipient recommended a provision to prevent owners from transferring personal assets to their companies to avoid counting them in the PNW calculation. Another said the certification for the PNW statement should specifically say that the information is "complete" as well as true. Yet another suggested that a prime contractor who owns a high percentage (e.g., 49 percent) of a DBE should not be able to use that DBE for credit. There were a number of suggestions that more of the certification process be done electronically, rather than on paper. A few comments said that getting back to an applicant within 20 days, as proposed in the NPRM, concerning whether the application was complete was too difficult for some recipients who have small staffs.

DOT Response

The Department believes that regularly updated on-site reviews are an extremely important tool in helping avoid fraudulent firms or firms that no longer meet eligibility requirements from participating in the DBE program. Ensuring that only eligible firms participate is a key part of maintaining the integrity of the program. We also realize that on-site reviews can be time- and resource-intensive. Consequently, while we believe that it is advisable for recipients and UCPs to conduct updated on-site reviews of certified companies on regular and reasonably frequent basis, and we strongly encourage such undated reviews, we have decided not to mandate a particular schedule, though we urge recipients to regard on-site reviews as a critical part of their compliance activities. When recipients or UCPs become aware of a change in circumstances or concerns that a firm may be ineligible or engaging in misconduct (e.g., from notifications of changes by the firm itself, complaints,

information in the media, etc.), the recipient or UCP should review the firm's eligibility, including doing an on-site review.

When recipients in other states (see discussion of interstate certification above) obtain the home state's certification information, they must rely on the on-site report that the home state has in its files plus the affidavits of no change, etc. that the firm has filed with the home state. It is not appropriate for State B to object to an out-of-state firm's certification because the home state's on-site review is older than State B thinks desirable, since that would unfairly punish a firm for State A's failure to update the firm's on-site review. However, if an on-site report is more than three years old, State B could require that the firm provide an affidavit to the effect that all the facts in the report remain true and correct.

While we recognize that reports that have not been updated, or which do not appear to contain sufficient analysis of a firm's eligibility, make certification tasks more difficult, our expectation is that the Department's enhanced interstate certification process will result in improved quality in on-site reviews so that recipients in various states have a clear picture of the structure and operation of firms and the qualifications of their owners. To this end, we encourage recipients and UCPs to establish and maintain communication in ways that enable information collected in one state to be shared readily with certification agencies in other states. This information sharing can be done electronically to reduce costs.

Firms may withdraw pending applications for certification for a variety of reasons, many of them legitimate. A withdrawal of an application is not the equivalent of a denial of that application. Consequently, we believe that it is inappropriate for recipients and UCPs to penalize firms that withdraw pending applications by applying the up-to-12 month waiting period of section 26.86(c) to such withdrawals, thereby preventing the firm from resubmitting the application before that time elapses. We believe that permitting recipients to place resubmitted applications at the end of the line for consideration sufficiently protects the recipients' workloads from being overwhelmed by repeated resubmissions. For example, suppose that Firm X withdraws its application in August. It resubmits the application in October. Meanwhile, 20 other firms have submitted applications. The recipient must accept Firm X's resubmission in October, but is not

required to consider it before the 20 applications that arrived in the meantime. Recipients should also closely examine changes made to the firm since the time of its first application.

We agree with commenters that it is not appropriate for recipients to limit NAICS codes in which a firm is certified to a certain number. Firms may be certified in NAICS codes for however many types of business they demonstrate that they perform and concerning which their disadvantaged owners can demonstrate that they control. We have added language to the regulation making this point. We also agree that it is not appropriate for a recipient or UCP to insist on professional certification as a *per se* condition for controlling a firm where state law does not impose such a requirement. We have no objection to a recipient or UCP voluntarily using its own business classification system in addition to using NAICS codes, but it is necessary to use NAICS codes.

SBA has now gone to a self-certification approach for small disadvantaged business, the SBA 8(a) program differs from the DBE program in important respects, and the SBA-DOT memorandum of understanding (MOU) on certification matters lapsed over five years ago. Under these circumstances, we have decided to delete former sections 26.84 and 26.85, relating to provisions of that MOU.

DBE firms in the DBE program must be fully independent, as provided in Part 26. If a firm has become dependent on a non-DBE firm through participation in another program, then it may be found ineligible for DBE program purposes. To say otherwise would create inconsistent standards that would enable firms already participating in other programs to meet a lower standard than other firms for DBE participation.

We believe that adding a regulatory provision prohibiting owners from transferring personal assets to their companies to avoid counting them in the PNW calculation would be difficult to implement, since owners of businesses often invest assets in the companies for legitimate reasons. However, as an interpretive matter, recipients are authorized to examine such transfers and, if they conclude that the transfer is a ruse to avoid counting personal assets toward the PNW calculation rather than a legitimate investment in the company and its growth, recipients or UCPs may continue to count the assets toward PNW.

We agree that the certification for the PNW statement should specifically say

that the information is “complete” as well as true and that a somewhat longer time period would be appropriate for recipients and UCPs to get back to applicants with information on whether their applications were complete. We have added a regulatory text statement on the former point and extended the time period on the latter point to 30 days.

If a prime contractor who owns a high percentage of a DBE that it wishes to use on a contract, issues concerning independence, affiliation, and commercially useful function can easily arise. For this reason, recipients should closely scrutinize such relationships. This scrutiny may well result, in some cases, in denying DBE credit or initiating decertification action.

We encourage the use of electronic methods in the application and certification process. As in other areas, electronic methods can reduce administrative burdens and speed up the process.

Accountability and Goal Submissions

The NPRM proposed that if a recipient failed to meet its overall goal, it would, within 60 days, have to analyze the shortfall, explain the reasons for it, and come up with corrective actions for the future. All State DOTs and the largest transit authorities and airports would have to send their analyses and corrective action plans to DOT operating administrations; smaller transit authorities and airports would retain them on file. While there would not be any requirement to meet a goal—to “hit the number”—failure to comply with these requirements could be regarded as a failure to implement a recipient’s program in good faith, which could lead to a finding of noncompliance with the regulation.

In a related provision, the Department asked questions in the NPRM concerning the recent final provision concerning submitting overall goals on a three-year, rather than an annual, basis. In particular, the NPRM asked whether it should be acceptable for a recipient to submit year-to-year projections of goals within the structure of a three-year goal and how implementation of the accountability proposal would work in the context of a three-year goal, whether or not year-to-year projections were made.

About two-thirds of the 64 comments addressing the accountability provision supported it. These commenters included DBEs, recipients, and some associations and other commenters. Some of these commenters, in fact, thought the proposal should be made

stronger. For example, a commenter suggested that a violation “will” rather than “could” be found for failure to provide the requested information. Another suggested that, beyond looking at goal attainment numbers, the accountability provisions should be broadened to include the recipient’s success with respect to a number of program elements (e.g., good faith efforts on contracts, outreach, DBE liaison officer’s role, training and education of staff).

Commenters also presented various ideas for modifying the proposal. These included suggestions that the Department should add a public input component, provide more guidance on the shortfall analysis and how to do it, delay its effective date to allow recipients to find resources to comply, ensure ongoing measurement of achievements rather than just measuring at the end of a year or three-year period, ensure that there is enough flexibility in explaining the reasons for a shortfall, or lengthen the time recipients have to submit the materials (e.g., 90 days, or 60 days after the recipient’s report of commitments and achievements is due). One commenter suggested that an explanation should be required only when there is a pattern of goal shortfalls, not in individual instances. There could be a provision for excusing recipients who fell short of their goal by very small amount, or even if the recipient made 80 percent of its goal.

Opponents of the proposal—mostly recipients plus a few associations—said that the proposal would be too administratively burdensome. In addition, they feared that making recipients explain a shortfall and propose corrective measures would turn the program into a prohibited set-aside or quota program, a concern that was particularly troublesome in states affected by the *Western States* decision. Moreover, a number of commenters said, the inability of recipients to meet overall goals was often the result of factors beyond their control. In addition, recipients might unrealistically reduce goals in order to avoid having to explain missing a more ambitious target.

With respect to the reporting intervals for goals, 28 of the 39 commenters who addressed the issue favored some form of at least optional yearly reporting of goals, either in the form of annual goal submissions or, more frequently, of year-to-year projections of goals within the framework of a three-year overall goal. The main reason given for this preference was a concern that projects and the availability of Federal funding for them were sufficiently volatile that making a projection that was valid for

a three-year period was problematic. This point of view was advanced especially by airports. Some other commenters favored giving recipients discretion whether to report annually or triennially. Commenters who took the point of view that the three-year interval was preferable agreed with original rationale of reducing repeated paperwork burdens on recipients. One commenter asked that the rule specify that, especially in a three-year interval schedule of goal submission, a recipient “must” submit revisions if circumstances change.

There was discussion in the NPRM of the relationship between the goal submission interval and the accountability provision. For example, if a recipient submitted overall goals on a three-year basis, would the accountability provision be triggered annually, based on the recipient’s annual report (as the NPRM suggested) or only on the basis of the recipient’s performance over the three-year period? If there were year-to-year projections within a three-year goal, would the accountability provision relate to accountability for the annual projection or the cumulative three-year goal? Commenters who favored year-to-year projections appeared to believe that accountability would best relate to each year’s projection, though the discussion of this issue in the comments was often not explicit. Some comments, including one from a Member of Congress, did favor holding recipients accountable for each year’s separate performance.

There was a variety of other comments on goal-related issues. Some commenters asked that the three DOT operating administrations coordinate submitting goals so that a State DOT submitting goals every three years would be able to submit its FHWA, FAA, and FTA goals in the same year. A DBE group wanted the Department to strengthen requirements pertaining to the race-neutral portion of a recipient’s overall goal. A commenter who works with transit vehicle manufacturers requested better monitoring of transit vehicle manufacturers by FTA. A group representing DBEs wanted recipients to focus on potential, and not just certified, DBEs for purposes of goal setting. The same group also urged consideration of separate goals for minority- and women-owned firms.

DOT Response

Under Part 26, the Department has always made unmistakably clear that the DBE program does not impose quotas. No one ever has been, or ever will be, sanctioned for failing to “hit the number.” However, goals must be

implemented in a meaningful way. A recipient's overall goal represents its estimate of the DBE participation it would achieve in the absence of discrimination and its effects. Failing to meet an overall goal means that the recipient has not completely remedied discrimination and its effects in its DOT-assisted contracting. In the Department's view, good faith implementation of a DBE program by a recipient necessarily includes understanding why the recipient has not completely remedied discrimination and its effects, as measured by falling short of its "level playing field" estimate of DBE participation embodied in its overall goal. Good faith implementation further means that, having considered the reasons for such a shortfall, the recipient will devise program actions to help minimize the potential for a shortfall in the future.

Under the Department's procedures for reviewing overall goals and the methodology supporting them, the Department has the responsibility of ensuring that a recipient's goals are well-grounded in relevant data and are derived using a sound methodology. The Department would not approve a recipient's goal submission if it appeared to understate the "level playing field" amount of DBE participation the recipient could rationally expect, whether to avoid being accountable under the new provisions of the rule or for other reasons.

For these reasons, the Department is adopting the NPRM's proposed accountability mechanism. We do not believe that the concerns of some commenters that this mechanism would create a quota system are justified: No one will be penalized for failing to meet an overall goal. Moreover, promoting transparency and accountability is not synonymous with imposing a penalty and should not be viewed as such. Understanding the reasons for not meeting a goal and coming up with ways of avoiding a shortfall in the future, while not creating a quota system, do help to ensure that recipients take seriously the responsibility to address discrimination and its effects.

Moreover, the administrative burden of compliance falls only on those recipients who fail to meet a goal, not on all recipients. Understanding what is happening in one's program, why it is happening, and how to fix problems is, or ought to be, a normal, everyday part of implementing a program, so the analytical tasks involved in meeting this requirement should not be new to recipients. We do not envision that recipients' responses to this requirement

would be book-length; a reasonable succinct summary of the recipient's analysis and proposed actions should be sufficient though, like all documents submitted in connection with the DBE program, it should show the work and reasoning leading to the recipient's conclusions.

For example, a recipient might determine that its process for ascertaining whether prime bidders who failed to meet contract goals had made adequate good faith efforts was too weak, and that prime bidders consequently received contracts despite making insufficient efforts to find DBEs for contracts. In such a case, the recipient could take corrective action such as more stringent review of bidder submissions or meeting with prime bidders to provide guidance and assistance on how to do a better job of making good faith efforts.

We agree that there may be circumstances in which a recipient's inability to meet a goal is for reasons beyond its control. If that is the case, the recipient's response to this requirement can be to identify such factors, as well as suggesting how these problems may be taken into account and surmounted in the future. We also agree with those commenters who said that good-faith implementation of a DBE program involves more than meeting an overall goal. Factors like those cited by commenters are important as part of an overall evaluation of a recipient's success. This accountability provision, however, is intended to focus on the process recipients are using to achieve their overall goals, rather than to act as a total program evaluation tool. The operating administrations will continue to conduct program reviews that address the breadth of recipients' program implementation.

The Department believes that a clear, bright-line trigger for the application of the accountability provision makes the most sense administratively and in terms of achieving the purpose of the provision. Consequently, we are not adopting suggestions that the provision be triggered only by a pattern of missing goals, or an average of missing goals over the period of a three-year overall goal, or a shortfall of a particular percentage. Any shortfall means that a recipient has dealt only incompletely with the effects of discrimination, and we believe that it is appropriate in any such case that the recipient understand why that is the case and what steps to take to improve program implementation in the future.

The three-year goal review interval was intended to reduce administrative burdens on recipients. Nevertheless, we

understand that some recipients, especially airports, may be more comfortable with annual projections and updates of overall goals. We have no objection to recipients making annual projections, for informational purposes, within the three-year overall goal. It is still the formally submitted and reviewed three-year goal, however, and not the informal annual projections, that count from the point of view of the accountability mechanism. For example, suppose an airport has a three-year annual overall goal of 12 percent. For informational purposes, the airport chooses to make informal annual projections of 6, 12, and 18 percent for years 1–3, respectively (which, by the way, are not required to be submitted to the Department). The accountability mechanism requirements would be triggered in each of the three years covered by the overall goal if DBE achievements in each year were less than 12 percent.

The Department agrees that recipients should be accountable for effectively carrying out the race-neutral portion of their programs. If a recipient fell short of its overall goal because it did not achieve the projected race-neutral portion of its goal, then this is something the recipient would have to explain and establish measures to correct (e.g., by stepping up race-neutral efforts and/or concluding that it needed to increase race-conscious means of achieving its goal). We also agree that it is reasonable, in calculating goals and in doing disparity studies, to consider potential DBEs (e.g., firms apparently owned and controlled by minorities or women that have not been certified under the DBE program) as well as certified DBEs. This is consistent with good practice in the field as well as with DOT guidance. Separate goals for various groups of disadvantaged individuals are possible with a program waiver of the DBE regulation, if a sufficient case is made for the need for group-specific goals.

In the section of the rule concerning goal-setting (49 CFR 26.45), the Department is also taking this opportunity to make a technical correction. In the final rule establishing the three year DBE goal review cycle, the Department inadvertently omitted from § 26.45(f)'s regulatory text paragraphs (3), (4), and (5), which govern the content of goal submissions, operating administration review of the submission, and review of interim goal setting mechanisms. It was never the intent of the Department to remove or otherwise change those provisions of section 26.45(f) of the rule. This final rule corrects that error by restructuring

paragraphs (1) and (2) of section 26.45(f) and restoring the language of paragraphs (3), (4), and (5) of that section of the rule. We apologize for any confusion that this error may have caused.

The Department supports strong outreach efforts by recipients to encourage minority- and women-owned firms to become certified as DBEs, so that recipients can set and meet realistic goals. However, we caution recipients against stating or implying that minority- and women-owned firms can participate in recipients' contracts only if they become certified as DBEs. It would be contrary to nondiscrimination requirements of this part and of Title VI for a recipient to limit the opportunity of minority- or women-owned firms to compete for any contract because the firm was not a certified DBE.

Program Oversight

The NPRM proposed to require recipients to certify that they have monitored the paperwork and on-site performance of DBE contracts to make sure that DBEs actually perform them. Comment was divided on this proposal, with 21 comments favoring either the proposal or stronger oversight mechanisms and 18 opposed.

Commenters who favored the proposal, including DBEs and some associations and recipients, generally believed that the provision would make it less likely that post-award abuse of DBEs by prime contractors would occur. One recipient noted that it already followed this approach with respect to ARRA grants. Some commenters wanted the Department to require additional steps, such as requiring recipients to make periodic visits to the job site and keeping records of each visit, to ensure that the DBELO did in fact have direct access to the organization's CEO concerning DBE matters, and to maintain sufficient trained staff to do needed monitoring. DBE associations wanted mandatory monitoring of good faith efforts (e.g., by keeping records of all contacts made by prime contractors) and terminations of DBEs by prime contractors, as well as to have certifications signed by persons higher up in the organization than the DBELO (e.g., the CEO). Another commenter sought further checking concerning counting issues. A consultant and a recipient suggested that recipient certifications should be more frequent than a one-time affair, (e.g., monthly or quarterly).

Commenters who opposed the NPRM proposal, most of whom were recipients, said that the workload the certification requirement would create would be too administratively

burdensome, particularly for recipients with small staffs. The certification requirement could duplicate existing commercially useful function reviews. They also doubted the payoff in terms of improved DBE program implementation would be worth the effort. Some recipients said that they did monitor post-award performance and that the proposed additional paperwork requirement step would add little to the substance of their processes. One recipient noted that it would be very difficult to perform an on-site review of contract performance in the case of professional services consultants whose work was performed out of state.

One recipient suggested that a middle ground might be to have the recipient certify monitoring of a sample of contracts, since it lacked the staff for field monitoring of all contracts. A consultant suggested selecting contracts for monitoring based on a "risk-based analysis" of contracts or by focusing on contracts where prime contractors' achievements did not measure up to their commitments. One recipient suggested limiting the certification requirement to one commercially useful function review per year on a contract. A few recipients asked for guidance on what constituted adequate staffing for the DBE program.

DOT Response

The Department's DBE rule already includes a provision (49 CFR 26.37(b)) requiring recipients to have a monitoring and enforcement mechanism to ensure that work committed to DBEs is actually performed by DBEs. The trouble is that, based on the Department's experience, this provision is not being implemented by recipients as well as it should be. The FHWA review team that has been examining state implementation of the DBE program found that many states did not have an effective compliance monitoring program in place. DBE fraud cases investigated by the Department's Office of Inspector General and criminal prosecutions in the Federal courts have highlighted numerous cases in which recipients were unaware, often for many years, of situations in which non-DBE companies were claiming DBE credit for work that DBEs did not perform.

The Department believes that, for the DBE program to be meaningful, it is not enough that prime contractors commit to the use of DBEs at the time of contract award. It is also necessary that the DBEs actually perform the work involved. Recipients need to know whether DBEs are actually performing the work involved, lest program effectiveness suffer and the door be left open to fraud.

Recipients must actually monitor each contract, on paper and in the field, to ensure that they have this knowledge. Monitoring DBE compliance on a contract is no less important, and should be no more brushed aside, than compliance of with project specifications. This is important for prime contracts performed by DBEs as well as for situations in which DBEs act as subcontractors, and the monitoring and certification requirements will apply to both situations.

Consequently, the Department believes that the proposed requirement that recipients memorialize the monitoring they are already required to perform has merit. Its intent is to make sure that the monitoring actually takes place and that the recipient stands by the statement that DBE participation claimed on a contract actually occurred. This monitoring, and the recipient's written certification that it took place, must occur with respect to every contract on which DBE participation is claimed, not just a sample or percentage of such contracts, to make sure that the program operates as it is intended. It applies to contracts entered into prior to the effective date of this rule, since the obligation to monitor work performed by DBEs has always been a key feature of the DBE program.

With respect to concerns about administrative burden, the Department believes that monitoring is something that recipients have been responsible for conducting since the inception of Part 26. Therefore, we are not asking recipients to do something with which they can claim they are unfamiliar. Moreover, as the final rule version of this provision makes clear, recipients can combine the on-site monitoring for DBE compliance with other monitoring they do. For example, the inspector who looks at a project to make sure that the contractor met contract specifications before final payment is authorized could also confirm that DBE requirements were honestly met.

While we believe that more intensive and more frequent monitoring of DBE performance on contracts is desirable, we encourage recipients to monitor contracts as closely as they can. However, we do not, for workload reasons, want to mandate more pervasive monitoring at this time. We agree with commenters that it would be difficult to do on-site monitoring of contracts performed outside the state (e.g., an out-of-state consulting contract), and we have added language specifying that the requirement to monitor work sites pertains to work sites in the recipient's state. In reference to what constitutes adequate staffing of

a DBE program, we believe that it is best to look at this question in terms of a performance standard. The Department's rule requires certain tasks (e.g., responding to applications for DBE eligibility, certification and monitoring of DBE performance on contracts) to be performed within certain time frames. If a recipient has sufficient staff to meet these requirements, then its staffing levels are adequate. If not (e.g., applications for DBE certification are backlogged for several months), then staffing is inadequate.

Small Business Provisions

The NPRM proposed that recipients would add an element to their DBE programs to foster small business participation in contracts. The purpose of this proposal was to encourage programs that, by facilitating small business participation, augmented race-neutral efforts to meet DBE goals. The program element could include items such as race-neutral small business set-asides and unbundling provisions. The NPRM did not propose to mandate any specific elements, however.

The majority of commenters addressing this part of the NPRM—38 of 55—favored the NPRM's approach. Commenters approving the proposal were drawn from DBEs, associations, and recipients. Generally, they agreed that steps to create improved opportunities for small business would help achieve the objectives of the DBE program. Specific elements that various commenters supported included unbundling (which some commenters suggested should be made mandatory), prohibiting double-bonding, small business set-asides, expansions of existing small business development programs and mentor-protégé programs.

Commenters who did not support the NPRM proposal, most of whom were recipients, were concerned that having small business programs would draw focus from programs targeted more directly at DBEs. They were also concerned about having sufficient resources to carry out the programs they might include in a small business program element. One commenter thought that a small business program element would duplicate existing supportive services programs. Another thought unbundling would not work. A number of recipients thought it would be better for DOT to issue guidance on this subject rather than to create regulatory language. A recipient association characterized the proposal as burdensome and not productive.

Eight commenters addressed the issue of bonding and insurance requirements. A bonding company association

explained that both performance and payment bonds had an appropriate place in contracting and believed that subcontractor bonds were not duplicative of prime contractor bonds. A DBE wanted to prohibit prime contractors from setting bonding requirements for subcontractors. A recipient said the Department should treat prime contractors and subcontractors the same for bonding purposes. One DBE association said the combination of payment bonds, performance bonds, and retention was burdensome for subcontractors and Another DBE association said that it was inappropriate to require bonding of the subcontractor when the prime contractor was already bonded for the overall work of the contract. This association suggested that a prime contractor could not demonstrate good faith efforts to meet a goal if it insisted on such a double bond.

DOT Response

DBEs are small businesses. Program provisions that help small businesses can help DBEs. By facilitating participation for small businesses, recipients can make possible more DBE participation, and participation by additional DBE firms. Consequently, we believe that a program element that pulls together the various ways that a recipient reaches out to small businesses and makes it easier for them to compete for DOT-assisted contracts will foster the objectives of the DBE program. Because small business programs of the kind suggested in the NPRM are race-neutral, use of these programs can assist recipients in meeting the race-neutral portions of their overall goals. This is consistent with the language that under Part 26, recipients are directed to meet as much as possible of their overall goals through race-neutral means.

It is important to keep in mind that race-neutral programs should not be passive. Simply waiting and hoping that occasional DBEs will participate without the use of contract goals does not an effective race-neutral program make. Rather, recipients are responsible for taking active, effective steps to increase race-neutral DBE participation, by implementing programs of the kind mentioned in this section of the NPRM and final rule. The Department will be monitoring recipients' race-neutral programs to make sure that they meet this standard.

In adopting the NPRM proposal requiring a small business program element, the Department believes that this element—which is properly viewed as an integral part of a recipient's DBE

program—need not distract recipients from other key parts of recipients' DBE programs, such as certification and the use of race-conscious measures. There are different ways of encouraging DBE participation and meeting DBE overall goals, and recipients' programs need to address a variety of these means. Many of the provisions that recipients can use to implement the requirements of the new section (e.g., unbundling, race-neutral small business set-asides) are already part of the regulation or DOT guidance, and carrying out these elements should not involve extensive additional burdens.

With respect to bonding, the Department believes that commenters made a good point with respect to the burden of duplicative bonding. By duplicative bonding, we mean insistence by a prime contractor that a DBE provide bonding for work that is already covered by bonding or insurance provided by the prime contractor or the recipient. Like duplicative bonding, excessive bonding—a requirement, which according to participants in the Department's stakeholder meetings, is sometimes imposed to provide a bond in excess of the value of the subcontractor's work—can act as an unnecessary barrier to DBE participation. While we believe that additional action to address these problems may have merit, there was not a great deal of comment on the implications of potential regulatory requirements in these areas. Consequently, we will defer action on these issues at this time and seek additional comment and information in the follow-on NPRM the Department is planning to issue.

Miscellaneous Comments

Several commenters expressed general support for the DBE program and/or the NPRM, while two commenters opposed the DBE program in general. A large number of comments from an advocacy organization's members supported additional bonding assistance and more frequent data reporting. A commenter wanted to add DBE coverage for Federal Railroad Administration (FRA) grants. Commenters also suggested such steps as increasing technical assistance, using project labor agreements to increase DBE participation, an SBA 8(a) program-like term limit on participation in the DBE program, a better uniform reporting form, greater ease in complaining to DOT and recipients about noncompliance issues, and putting current joint check guidance into the rule's text.

DOT Response

The Department already has programs in place concerning bonding and data reporting. There is not currently a direct, specific statutory mandate for a DBE program in FRA financial assistance programs, though the Department is considering ways of ensuring nondiscrimination in contracting in these programs. For example, like all recipients of Federal financial assistance, FRA recipients are subject to requirements under Title VI of the Civil Rights Act of 1964. Existing programs, such as the FHWA supportive services program and various initiatives by the Department's Office of Small and Disadvantaged Business Utilization, are in place to assist DBEs in being competitive. Given the language of the statutes authorizing the DOT DBE program, we do not believe that a term limit on the participation of DBE companies would be permissible. The Department is working on improvements on all its DBE forms, and we expect to seek comment on revised forms in the follow-on NPRM we anticipate publishing. At this point, we think that the joint check guidance is sufficient without codification, but we can look at this issue, among other certification issues, in the next round of rulemaking.

The Continuing Compelling Need for the DBE Program

As numerous court decisions have noted,¹ the Department's DBE regulations, and the statutes authorizing them, are supported by a compelling need to address discrimination and its effects. This basis for the program has been established by Congress and applies on a nationwide basis. Both the House and Senate FAA reauthorization bills contained findings reaffirming the compelling need for the program. We would also call to readers' attention the additional information presented to the House of Representatives in a March 26, 2009, hearing before the Transportation and Infrastructure Committee and made a part of the record of that hearing and a Department of Justice document entitled "The Compelling Interest for Race- and Gender-Conscious Federal Contracting Programs: A Decade Later An Update to the May 23, 1996 Review of Barriers for Minority- and Women-

Owned Businesses" and the information and documents cited therein. This information confirms the continuing compelling need for race- and gender-conscious programs such as the DOT DBE program.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This is a nonsignificant regulation for purposes of Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. Its provisions involve administrative modifications to several provisions of a long-existing and well-established program, designed to improve the program's implementation. The rule does not alter the direction of the program, make major policy changes, or impose significant new costs or burdens.

Regulatory Flexibility Act

A number of provisions of the rule reduce small business burdens or increase opportunities for small business, notably the interstate certification process and the small business DBE program element provisions. Small recipients would not be required to file reports concerning the reasons for overall goal shortfalls and corrective action steps to be taken. Only State DOTs, the 50 largest transit authorities, and the 30–50 airports receiving the greatest amount of FAA financial assistance would have to file these reports. The task of sending copies of on-site review reports to other certification entities fall on UCPs, which are not small entities, and in any case can be handled electronically (e.g., by emailing PDF copies of the documents). While all recipients would have to input information about decertifications and denials into a DOT database, this would be a quick electronic process that would not be costly or burdensome. In any case, this requirement will be phased in as the Department prepares to put the database online. The rule does not make major policy changes that would cause recipients to expend significant resources on program modifications. For these reasons, the Department certifies that the rule does not have a significant economic effect on a substantial number of small entities.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of

compliance on them. We have analyzed this rule under the Order and have determined that it does not have implications for federalism, since it merely makes administrative modifications to an existing program. It does not change the relationship between the Department and State or local governments, pre-empt State law, or impose substantial direct compliance costs on those governments.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995, DOT has submitted the Information Collection Requests (ICRs) below to the Office of Management and Budget (OMB). Before OMB decides whether to approve these proposed collections of information and issue a control number, the public must be provided 30 days to comment. Organizations and individuals desiring to submit comments on the collections of information in this rule should direct them to the Office of Management and Budget, *Attention*: Desk Officer for the Office of the Secretary of Transportation, Office of Information and Regulatory Affairs, Washington, DC 20503. OMB is required to make a decision concerning the collection of information requirements contained in this rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

We will respond to any OMB or public comments on the information collection requirements contained in this rule. The Department will not impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. The Department intends to obtain current OMB control numbers for the new information collection requirements resulting from this rulemaking action. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

It is estimated that the total incremental annual burden hours for the information collection requirements in this rule are 47,450 hours in the first year, 83,370 in the second year, and 51,875 thereafter. The following are the information collection requirements in this rule:

Certification of Monitoring (49 CFR 26.37(b))

Each recipient would certify that it had conducted post-award monitoring of contracts which would be counted for

¹ See for instance *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147 (10th Cir. 2000), *Northern Contracting Inc. v. Illinois Department of Transportation*, 473 F.3d 715 (7th Cir. 2007), *Sherbrooke Turf, Inc. v. Minnesota Department of Transportation*, 345 F.3d 964 (8th Cir. 2003), *Western States Paving Co., Inc. v. Washington Department of Transportation*, 407 F.3d 983 (9th Cir. 2005).

DBE credit to ensure that DBEs had done the work for which credit was claimed. The certification is for the purpose of ensuring accountability for monitoring which the regulation already requires.

Respondents: 1,050.

Frequency: 13,400 (i.e., there are about 13,400 contracts per year that have DBE participation, based on 2009 data).

Estimated Burden per Response: 1/2 hour.

Estimated Total Annual Burden: 6,700 hours.

Small Business Program Element (49 CFR 26.39)

Each recipient would add a new DBE program element, consisting of strategies to encourage small business participation in their contracting activities. No specific element would be required, and many of the potential elements are already part of the existing DBE regulation or implementing guidance (e.g., unbundling; race-neutral small business set-asides). The small business program element is intended to pull a recipient's small business efforts into a single, unified place in this DBE Program. This requirement goes into effect a year from the effective date of the rule.

Respondents: 1,050.

Frequency: Once (for a one-time task).

Estimated Burden per Response: 30 hours.

Estimated Total Annual Burden Hours: 31,500 (one time).

Accountability Mechanism (49 CFR 26.47(c))

If a recipient failed to meet its overall goal in a given year, it would have to determine the reasons for its failure and establish corrective steps.

Approximately 150 large recipients would transmit this analysis to DOT; smaller recipients would perform the analysis but would not be required to submit it to DOT. We estimate that about half of recipients would be subject to this requirement in a given year.

Respondents: 525 (150 of which would have to submit reports to DOT).

Frequency: Once per year.

Estimated Average Burden per Response: 80 hours + 5 for recipients sending report to DOT.

Estimated Total Annual Burden Hours: 42,750.

Affidavit of Completeness (49 CFR 26.45(c)(4))

When a firm certified in its home state seeks certification in another state ("State B"), the firm must provide an affidavit that the information the firm

provides to State B is complete and is identical to that submitted to the home state. The calculation of the burden for this item assumes that there will be an average 2600 interstate applications each year to which this requirement would apply. This requirement takes effect a year from the effective date of this rule.

Respondents: 2,600.

Frequency: Once per year to a given recipient.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden Hours: 2,600 hours.

Transmittal of On-Site Report (49 CFR 26.85(d)(1))

When a "State B" receives a request for certification from a firm certified in "State A," State A must promptly send a copy of that report to State B. This would involve simply emailing a PDF or other electronic copy of an existing report. This requirement takes effect one year from the effective date of this rule.

Respondents: 52.

Frequency: An average of 50 per year per recipient.

Estimated Average Burden per Response: 1/2 hour.

Estimated Total Annual Burden Hours: 1,300.

Transmittal of Decertification/Denial Information (49 CFR 26.85(f)(1))

When a unified certification program (UCP) in a state denies a firm's application for certification or decertifies the firm, it must electronically notify a DOT database of the fact. The information in the database is then available to other certification agencies for their reference. The calculation of the burden of this requirement assumes that there would be an average of 100 such actions per year by each UCP.

Respondents: 52.

Frequency: An average of 100 per year per recipient.

Estimated Average Burden per Response: 1/2 hour.

Estimated Total Annual Burden Hours: 2,600.

Transmittal of Denial/Decertification Documents (49 CFR 26.85(f)(3))

When a UCP notes, from the DOT database, that a firm that has applied or been granted certification was denied or decertified elsewhere, the UCP would request a copy of the decision by the other state, which would then have to send a copy. The Department anticipates that this would be done by an email exchange, the response attaching a PDF or other electronic copy

of an existing document. This requirement goes into effect a year from the effective date of the rule.

Respondents: 52.

Frequency: An average of 75 per year per recipient.

Estimated Average Burden per

Response: five minutes for the request; 1/2 hour for the response.

Estimated Total Annual Burden Hours: 2,625.

List of Subjects in 49 CFR Part 26

Administrative practice and procedure, Airports, Civil rights, Government contracts, Grant programs—transportation, Mass transportation, Minority businesses, Reporting and record keeping requirements.

Issued this 11th day of January, 2011, at Washington, DC.

Ray LaHood,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department amends 49 CFR Part 26 as follows:

PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

■ 1. The authority citation for part 26 is amended to read as follows:

Authority: 23 U.S.C. 304 and 324; 42 U.S.C. 2000d, *et seq.*; 49 U.S.C. 47107, 47113, 47123; Sec. 1101(b), Pub. L. 105–178, 112 Stat. 107, 113.

■ 2. In section 26.5, add a definition of "Home state" in alphabetical order to read as follows:

§ 26.5 What do the terms used in this part mean?

* * * * *

"Home state" means the state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

* * * * *

■ 3. In § 26.11, add paragraph (a) to read as follows:

§ 26.11 What records do recipients keep and report?

(a) You must transmit the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to this part, at the intervals stated on the form.

* * * * *

■ 4. Revise § 26.31 to read as follows:

§ 26.31 What information must you include in your DBE directory?

(a) In the directory required under § 26.81(g) of this Part, you must list all

firms eligible to participate as DBEs in your program. In the listing for each firm, you must include its address, phone number, and the types of work the firm has been certified to perform as a DBE.

(b) You must list each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work. You must make any changes to your current directory entries necessary to meet the requirement of this paragraph (a) by August 26, 2011.

■ 5. Revise § 26.37 (b) to read as follows:

§ 26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?

* * * * *

(b) Your DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. This mechanism must include a written certification that you have reviewed contracting records and monitored work sites in your state for this purpose. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of contract performance for other purposes (e.g., close-out reviews for a contract).

* * * * *

■ 6. Add § 26.39 to subpart B to read as follows:

§ 26.39 Fostering small business participation.

(a) Your DBE program must include an element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

(b) This element must be submitted to the appropriate DOT operating administration for approval as a part of your DBE program by February 28, 2012. As part of this program element you may include, but are not limited to, the following strategies:

(1) Establishing a race-neutral small business set-aside for prime contracts under a stated amount (e.g., \$1 million).

(2) In multi-year design-build contracts or other large contracts (e.g., for "megaprojects") requiring bidders on the prime contract to specify elements of the contract or specific subcontracts

that are of a size that small businesses, including DBEs, can reasonably perform.

(3) On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.

(4) Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.

(5) To meet the portion of your overall goal you project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

(c) You must actively implement your program elements to foster small business participation. Doing so is a requirement of good faith implementation of your DBE program.

■ 7. In § 26.45:

■ a. Revise paragraphs (e)(2), (e)(3), (f)(1), and (f)(2);

■ b. Redesignate paragraphs (f)(3) and (f)(4) as (f)(6) and (f)(7), respectively; and

■ c. Add new paragraphs (f)(3), (4), and (5).

The revisions and addition read as follows:

§ 26.45 How do recipients set overall goals?

* * * * *

(e) * * *

(2) If you are an FTA or FAA recipient, as a percentage of all FT or FAA funds (exclusive of FTA funds to be used for the purchase of transit vehicles) that you will expend in FTA or FAA-assisted contracts in the three forthcoming fiscal years.

(3) In appropriate cases, the FHWA, FTA or FAA Administrator may permit or require you to express your overall goal as a percentage of funds for a particular grant or project or group of grants and/or projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration.

(i) A project goal is an overall goal, and must meet all the substantive and procedural requirements of this section pertaining to overall goals.

(ii) A project goal covers the entire length of the project to which it applies.

(iii) The project goal should include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal.

(iv) The funds for the project to which the project goal pertains are separated from the base from which your regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

(f)(1)(i) If you set your overall goal on a fiscal year basis, you must submit it to the applicable DOT operating administration by August 1 at three-year intervals, based on a schedule established by the FHWA, FTA, or FAA, as applicable, and posted on that agency's Web site.

(ii) You may adjust your three-year overall goal during the three-year period to which it applies, in order to reflect changed circumstances. You must submit such an adjustment to the concerned operating administration for review and approval.

(iii) The operating administration may direct you to undertake a review of your goal if necessary to ensure that the goal continues to fit your circumstances appropriately.

(iv) While you are required to submit an overall goal to FHWA, FTA, or FAA only every three years, the overall goal and the provisions of Sec. 26.47(c) apply to each year during that three-year period.

(v) You may make, for informational purposes, projections of your expected DBE achievements during each of the three years covered by your overall goal. However, it is the overall goal itself, and not these informational projections, to which the provisions of section 26.47(c) of this part apply.

(2) If you are a recipient and set your overall goal on a project or grant basis as provided in paragraph (e)(3) of this section, you must submit the goal for review at a time determined by the FHWA, FTA or FAA Administrator, as applicable.

(3) You must include with your overall goal submission a description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, and the adjustments you made to the base figure and the evidence you relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and, where applicable, an explanation of why you did not use that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through race-neutral and race-conscious measures, respectively (see 26.51(c)).

(4) You are not required to obtain prior operating administration concurrence with your overall goal. However, if the operating

administration's review suggests that your overall goal has not been correctly calculated, or that your method for calculating goals is inadequate, the operating administration may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you.

(5) If you need additional time to collect data or take other steps to develop an approach to setting overall goals, you may request the approval of the concerned operating administration for an interim goal and/or goal-setting mechanism. Such a mechanism must:

(i) Reflect the relative availability of DBEs in your local market to the maximum extent feasible given the data available to you; and

(ii) Avoid imposing undue burdens on non-DBEs.

* * * * *

■ 8. In § 26.47, add paragraphs (c) and (d) to read as follows:

§ 26.47 Can recipients be penalized for failing to meet overall goals?

* * * * *

(c) If the awards and commitments shown on your Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, you must do the following in order to be regarded by the Department as implementing your DBE program in good faith:

(1) Analyze in detail the reasons for the difference between the overall goal and your awards and commitments in that fiscal year;

(2) Establish specific steps and milestones to correct the problems you have identified in your analysis and to enable you to meet fully your goal for the new fiscal year;

(3)(i) If you are a state highway agency; one of the 50 largest transit authorities as determined by the FTA; or an Operational Evolution Partnership Plan airport or other airport designated by the FAA, you must submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (c)(1) and (2) of this section to the appropriate operating administration for approval. If the operating administration approves the report, you will be regarded as complying with the requirements of this section for the remainder of the fiscal year.

(ii) As a transit authority or airport not meeting the criteria of paragraph (c)(3)(i) of this section, you must retain analysis and corrective actions in your records for three years and make it available to FTA or FAA on request for their review.

(4) FHWA, FTA, or FAA may impose conditions on the recipient as part of its approval of the recipient's analysis and corrective actions including, but not limited to, modifications to your overall goal methodology, changes in your race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.

(5) You may be regarded as being in noncompliance with this Part, and therefore subject to the remedies in § 26.103 or § 26.105 of this part and other applicable regulations, for failing to implement your DBE program in good faith if any of the following things occur:

(i) You do not submit your analysis and corrective actions to FHWA, FTA, or FAA in a timely manner as required under paragraph (c)(3) of this section;

(ii) FHWA, FTA, or FAA disapproves your analysis or corrective actions; or

(iii) You do not fully implement the corrective actions to which you have committed or conditions that FHWA, FTA, or FAA has imposed following review of your analysis and corrective actions.

(d) If, as recipient, your Uniform Report of DBE Awards or Commitments and Payments or other information coming to the attention of FTA, FHWA, or FAA, demonstrates that current trends make it unlikely that you will achieve DBE awards and commitments that would be necessary to allow you to meet your overall goal at the end of the fiscal year, FHWA, FTA, or FAA, as applicable, may require you to make further good faith efforts, such as by modifying your race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

■ 9. In § 26.51, revise paragraphs (b)(1) and (f)(1) to read as follows:

§ 26.51 What means do recipients use to meet overall goals?

* * * * *

(b) * * *

(1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under § 26.39 of this part.

* * * * *

(f) * * *

(1) If your approved projection under paragraph (c) of this section estimates that you can meet your entire overall goal for a given year through race-neutral means, you must implement your program without setting contract

goals during that year, unless it becomes necessary in order to meet your overall goal.

Example to paragraph (f)(1): Your overall goal for Year 1 is 12 percent. You estimate that you can obtain 12 percent or more DBE participation through the use of race-neutral measures, without any use of contract goals. In this case, you do not set any contract goals for the contracts that will be performed in Year 1. However, if part way through Year 1, your DBE awards or commitments are not at a level that would permit you to achieve your overall goal for Year 1, you could begin setting race-conscious DBE contract goals during the remainder of the year as part of your obligation to implement your program in good faith.

* * * * *

■ 10. In § 26.53:

■ a. Redesignate paragraph (g) as paragraph (i);

■ b. Redesignate paragraphs (f)(2) and (3) as paragraphs (g) and (h), respectively;

■ c. Revise paragraph (f)(1); and

■ d. Add new paragraphs (f)(2) through (6) to read as follows:

§ 26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?

* * * * *

(f)(1) You must require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) without your prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

(2) You may provide such written consent only if you agree, for reasons stated in your concurrence document, that the prime contractor has good cause to terminate the DBE firm.

(3) For purposes of this paragraph, good cause includes the following circumstances:

(i) The listed DBE subcontractor fails or refuses to execute a written contract;

(ii) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;

(iii) The listed DBE subcontractor fails or refuses to meet the prime contractor's

reasonable, nondiscriminatory bond requirements.

(iv) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;

(v) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;

(vii) You have determined that the listed DBE subcontractor is not a responsible contractor;

(vi) The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;

(vii) The listed DBE is ineligible to receive DBE credit for the type of work required;

(viii) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;

(ix) Other documented good cause that you determine compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

(4) Before transmitting to you its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to you, of its intent to request to terminate and/or substitute, and the reason for the request.

(5) The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise you and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why you should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), you may provide a response period shorter than five days.

(6) In addition to post-award terminations, the provisions of this section apply to preaward deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

* * * * *

■ 11. In § 26.67, revise paragraphs (a)(2)(i) and (iv), and in paragraphs (b), (c), and (d), remove "\$750,000" and add in its place "\$1.32 million".

The revisions read as follows:

§ 26.67 What rules determine social and economic disadvantage?

(a) * * *

(2)(i) You must require each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification to certify that he or she has a personal net worth that does not exceed \$1.32 million.

* * * * *

(iv) Notwithstanding any provision of Federal or state law, you must not release an individual's personal net worth statement nor any documents pertaining to it to any third party without the written consent of the submitter. Provided, that you must transmit this information to DOT in any certification appeal proceeding under section 26.89 of this part or to any other state to which the individual's firm has applied for certification under § 26.85 of this part.

* * * * *

■ 12. Revise § 26.71(n) to read as follows:

§ 26.71 What rules govern determinations concerning control?

* * * * *

(n) You must grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to you only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. You must not require that the firm be recertified or submit a new application for certification, but you must verify the disadvantaged owner's control of the firm in the additional type of work.

(1) The types of work a firm can perform (whether on initial certification or when a new type of work is added) must be described in terms of the most specific available NAICS code for that type of work. If you choose, you may also, in addition to applying the appropriate NAICS code, apply a descriptor from a classification scheme of equivalent detail and specificity. A correct NAICS code is one that describes, as specifically as possible, the principal goods or services which the firm would provide to DOT recipients. Multiple NAICS codes may be assigned where appropriate. Program participants must rely on, and not depart from, the plain meaning of NAICS code descriptions in determining the scope of a firm's certification. If your Directory does not list types of work for any firm

in a manner consistent with this paragraph (a)(1), you must update the Directory entry for that firm to meet the requirements of this paragraph (a)(1) by August 28, 2011.

(2) Firms and recipients must check carefully to make sure that the NAICS codes cited in a certification are kept up-to-date and accurately reflect work which the UCP has determined the firm's owners can control. The firm bears the burden of providing detailed company information the certifying agency needs to make an appropriate NAICS code designation.

(3) If a firm believes that there is not a NAICS code that fully or clearly describes the type(s) of work in which it is seeking to be certified as a DBE, the firm may request that the certifying agency, in its certification documentation, supplement the assigned NAICS code(s) with a clear, specific, and detailed narrative description of the type of work in which the firm is certified. A vague, general, or confusing description is not sufficient for this purpose, and recipients should not rely on such a description in determining whether a firm's participation can be counted toward DBE goals.

(4) A certifier is not precluded from changing a certification classification or description if there is a factual basis in the record. However, certifiers must not make after-the-fact statements about the scope of a certification, not supported by evidence in the record of the certification action.

* * * * *

■ 13. Revise § 26.73(b) to read as follows:

§ 26.73 What are other rules affecting certification?

* * * * *

(b)(1) You must evaluate the eligibility of a firm on the basis of present circumstances. You must not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of this part.

(2) You must not refuse to certify a firm solely on the basis that it is a newly formed firm, has not completed projects or contracts at the time of its application, has not yet realized profits from its activities, or has not demonstrated a potential for success. If the firm meets disadvantaged, size, ownership, and control requirements of

this Part, the firm is eligible for certification.

* * * * *

§ 26.81 [Amended]

■ 14. Amend § 26.81(g) by removing the word “section” and adding in its place the word “part” and by removing the period at the end of the last sentence and adding the words “and shall revise the print version of the Directory at least once a year.”

■ 15. In § 26.83, remove and reserve paragraph (e), revise paragraph (h), and add paragraphs (l) and (m) to read as follows:

§ 26.83 What procedures do recipients follow in making certification decisions?

* * * * *

(h) Once you have certified a DBE, it shall remain certified until and unless you have removed its certification, in whole or in part, through the procedures of section 26.87. You may not require DBEs to reapply for certification or require “recertification” of currently certified firms. However, you may conduct a certification review of a certified DBE firm, including a new on-site review, three years from the date of the firm’s most recent certification, or sooner if appropriate in light of changed circumstances (*e.g.*, of the kind requiring notice under paragraph (i) of this section), a complaint, or other information concerning the firm’s eligibility. If you have grounds to question the firm’s eligibility, you may conduct an on-site review on an unannounced basis, at the firm’s offices and jobsites.

* * * * *

(l) As a recipient or UCP, you must advise each applicant within 30 days from your receipt of the application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.

(m) Except as otherwise provided in this paragraph, if an applicant for DBE certification withdraws its application before you have issued a decision on the application, the applicant can resubmit the application at any time. As a recipient or UCP, you may not apply the waiting period provided under § 26.86(c) of this part before allowing the applicant to resubmit its application. However, you may place the reapplication at the “end of the line,” behind other applications that have been made since the firm’s previous application was withdrawn. You may also apply the waiting period provided under § 26.86(c) of this part to a firm that has established a pattern of

frequently withdrawing applications before you make a decision.

§ 26.84 [Removed]

■ 16. Remove section 26.84.

■ 17. Revise § 26.85 to read as follows

§ 26.85 Interstate certification.

(a) This section applies with respect to any firm that is currently certified in its home state.

(b) When a firm currently certified in its home state (“State A”) applies to another State (“State B”) for DBE certification, State B may, at its discretion, accept State A’s certification and certify the firm, without further procedures.

(1) To obtain certification in this manner, the firm must provide to State B a copy of its certification notice from State A.

(2) Before certifying the firm, State B must confirm that the firm has a current valid certification from State A. State B can do so by reviewing State A’s electronic directory or obtaining written confirmation from State A.

(c) In any situation in which State B chooses not to accept State A’s certification of a firm as provided in paragraph (b) of this section, as the applicant firm you must provide the information in paragraphs (c)(1) through (4) of this section to State B.

(1) You must provide to State B a complete copy of the application form, all supporting documents, and any other information you have submitted to State A or any other state related to your firm’s certification. This includes affidavits of no change (*see* § 26.83(j)) and any notices of changes (*see* § 26.83(i)) that you have submitted to State A, as well as any correspondence you have had with State A’s UCP or any other recipient concerning your application or status as a DBE firm.

(2) You must also provide to State B any notices or correspondence from states other than State A relating to your status as an applicant or certified DBE in those states. For example, if you have been denied certification or decertified in State C, or subject to a decertification action there, you must inform State B of this fact and provide all documentation concerning this action to State B.

(3) If you have filed a certification appeal with DOT (*see* § 26.89), you must inform State B of the fact and provide your letter of appeal and DOT’s response to State B.

(4) You must submit an affidavit sworn to by the firm’s owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States.

(i) This affidavit must affirm that you have submitted all the information required by 49 CFR 26.85(c) and the information is complete and, in the case of the information required by § 26.85(c)(1), is an identical copy of the information submitted to State A.

(ii) If the on-site report from State A supporting your certification in State A is more than three years old, as of the date of your application to State B, State B may require that your affidavit also affirm that the facts in the on-site report remain true and correct.

(d) As State B, when you receive from an applicant firm all the information required by paragraph (c) of this section, you must take the following actions:

(1) Within seven days contact State A and request a copy of the site visit review report for the firm (*see* § 26.83(c)(1)), any updates to the site visit review, and any evaluation of the firm based on the site visit. As State A, you must transmit this information to State B within seven days of receiving the request. A pattern by State B of not making such requests in a timely manner or by “State A” or any other State of not complying with such requests in a timely manner is noncompliance with this Part.

(2) Determine whether there is good cause to believe that State A’s certification of the firm is erroneous or should not apply in your State. Reasons for making such a determination may include the following:

(i) Evidence that State A’s certification was obtained by fraud;

(ii) New information, not available to State A at the time of its certification, showing that the firm does not meet all eligibility criteria;

(iii) State A’s certification was factually erroneous or was inconsistent with the requirements of this part;

(iv) The State law of State B requires a result different from that of the State law of State A.

(v) The information provided by the applicant firm did not meet the requirements of paragraph (c) of this section.

(3) If, as State B, unless you have determined that there is good cause to believe that State A’s certification is erroneous or should not apply in your State, you must, no later than 60 days from the date on which you received from the applicant firm all the information required by paragraph (c) of this section, send to the applicant firm a notice that it is certified and place the firm on your directory of certified firms.

(4) If, as State B, you have determined that there is good cause to believe that State A’s certification is erroneous or should not apply in your State, you

must, no later than 60 days from the date on which you received from the applicant firm all the information required by paragraph (c) of this section, send to the applicant firm a notice stating the reasons for your determination.

(i) This notice must state with particularity the specific reasons why State B believes that the firm does not meet the requirements of this Part for DBE eligibility and must offer the firm an opportunity to respond to State B with respect to these reasons.

(ii) The firm may elect to respond in writing, to request an in-person meeting with State B's decision maker to discuss State B's objections to the firm's eligibility, or both. If the firm requests a meeting, as State B you must schedule the meeting to take place within 30 days of receiving the firm's request.

(iii) The firm bears the burden of demonstrating, by a preponderance of evidence, that it meets the requirements of this Part with respect to the particularized issues raised by State B's notice. The firm is not otherwise responsible for further demonstrating its eligibility to State B.

(iv) The decision maker for State B must be an individual who is thoroughly familiar with the provisions of this Part concerning certification.

(v) State B must issue a written decision within 30 days of the receipt of the written response from the firm or the meeting with the decision maker, whichever is later.

(vi) The firm's application for certification is stayed pending the outcome of this process.

(vii) A decision under this paragraph (d)(4) may be appealed to the

Departmental Office of Civil Rights under s§ 26.89 of this part.

(e) As State B, if you have not received from State A a copy of the site visit review report by a date 14 days after you have made a timely request for it, you may hold action required by paragraphs (d)(2) through (4) of this section in abeyance pending receipt of the site visit review report. In this event, you must, no later than 30 days from the date on which you received from an applicant firm all the information required by paragraph (c) of this section, notify the firm in writing of the delay in the process and the reason for it.

(f)(1) As a UCP, when you deny a firm's application, reject the application of a firm certified in State A or any other State in which the firm is certified, through the procedures of paragraph (d)(4) of this section, or decertify a firm, in whole or in part, you must make an entry in the Department of Transportation Office of Civil Rights' (DOCR's) Ineligibility Determination Online Database. You must enter the following information:

- (i) The name of the firm;
- (ii) The name(s) of the firm's owner(s);
- (iii) The type and date of the action;
- (iv) The reason for the action.

(2) As a UCP, you must check the DOCR Web site at least once every month to determine whether any firm that is applying to you for certification or that you have already certified is on the list.

(3) For any such firm that is on the list, you must promptly request a copy of the listed decision from the UCP that made it. As the UCP receiving such a request, you must provide a copy of the decision to the requesting UCP within 7 days of receiving the request. As the

UCP receiving the decision, you must then consider the information in the decision in determining what, if any, action to take with respect to the certified DBE firm or applicant.

(g) You must implement the requirements of this section beginning January 1, 2012.

§ 26.87 [Amended]

■ 18. In § 26.87, remove and reserve paragraph (h).

§ 26.107 [Amended]

■ 19. In § 26.107, in paragraphs (a) and (b), remove "49 CFR part 29" and add in its place, "2 CFR parts 180 and 1200".

■ 20. In § 26.109, revise paragraph (a)(2) to read as follows:

§ 26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?

(a) * * *

(2) Notwithstanding any provision of Federal or state law, you must not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, you must transmit this information to DOT in any certification appeal proceeding under § 26.89 of this part or to any other state to which the individual's firm has applied for certification under § 26.85 of this part.

* * * * *

[FR Doc. 2011-1531 Filed 1-27-11; 8:45 am]

BILLING CODE 4910-9X-P

Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 8, 2012.

Steven Bradbury,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.665 is added to read as follows:

§ 180.665 Sedaxane; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide sedaxane, including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified in the following table is to be determined by measuring only sedaxane, *N*-[2-[1,1'-bicyclopropyl]-2-ylphenyl]-3-(difluoromethyl)-1-methyl-1*H*-pyrazole-4-carboxamide, as the sum of its *cis*- and *trans*-isomers in or on the commodity.

Commodity	Parts per million
Barley, grain	0.01
Barley, hay	0.04
Barley, straw	0.01
Canola, seed	0.01

Commodity	Parts per million
Oat, forage	0.015
Oat, grain	0.01
Oat, hay	0.06
Oat, straw	0.01
Rye, forage	0.015
Rye, grain	0.01
Rye, straw	0.01
Soybean, forage	0.05
Soybean, hay	0.04
Soybean, seed	0.01
Wheat, forage	0.015
Wheat, grain	0.01
Wheat, hay	0.06
Wheat, straw	0.01

(b) *Section 18 emergency exemptions.*

[Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect inadvertent residues.*

[Reserved]

[FR Doc. 2012-14957 Filed 6-19-12; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 23

[Docket No. OST-2011-0101]

RIN 2105-AE10

Airport Concessions Disadvantaged Business Enterprise: Program Improvements

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of Transportation's Airport Concessions Disadvantaged Business Enterprise (ACDBE) regulation to conform it in several respects to the disadvantaged business enterprise (DBE) rule for highway, transit, and airport financial assistance programs. This rule also amends small business size limits to ensure that the opportunity for small businesses to participate in the ACDBE program remains unchanged after taking inflation into account. This final rule also provides an inflationary adjustment in the personal net worth (PNW) cap for owners of businesses seeking to participate in DOT's ACDBE program and suspends, until further notice, future use of the exemption of up to \$3 million in an owner's assets used as collateral for financing a concession.

DATES: This rule's amendments to 49 CFR 23.3 and 23.35 are effective June 20, 2012. This rule's amendments to 49 CFR 23.29, 23.33, 23.45, and 23.57 are effective July 20, 2012.

FOR FURTHER INFORMATION CONTACT:

Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, Room W94-302, 202-366-9310, bob.ashby@dot.gov or Wilbur S. Barham, Director, National Airport Civil Rights Policy and Compliance, U.S. Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Room 1030, 202-385-6210, wilbur.barham@faa.gov.

SUPPLEMENTARY INFORMATION:

On January 28, 2011, the Department of Transportation published a Final Rule making several program improvements to the Department's DBE program rule (49 CFR part 26) for financial assistance programs (76 FR 5083). On May 27, 2011, the Department issued a notice of proposed rulemaking (NPRM) that proposed conforming amendments to the Department's companion rule for the ACDBE program (49 CFR part 23). The Department received a total of nine comments concerning the NPRM from three ACDBE firms, two consultants, one trade association, two airport recipients, and one individual.

In the preamble to the proposed rule, the Department explained that it was not necessary to propose conforming changes to Part 23 that would be parallel to all of the Part 26 changes. The NPRM noted Part 23 has existing provisions that already conform many of the amendments in Part 26. It cited as an example that it was not necessary to include a Part 23 provision parallel to the change to § 26.11 concerning the frequency of reports, since § 23.27(b) already states the appropriate reporting frequency for Part 23 reports.

Additionally, the NPRM noted that there are many Part 26 amendments that apply automatically to Part 23 because certain sections in Part 23 incorporate provisions of Part 26. A list of these amendments was provided in the NPRM, with an explanation of their applicability to the ACDBE program, and are listed below again for reference:

- § 26.31: This amendment, requiring that the DBE directory include the list of each type of work for which a firm is eligible to be certified, applies to the ACDBE program as well.

- § 26.51: Applied in the ACDBE context, this amendment directs recipients that originally set all race-neutral goals to start setting race-conscious concession-specific goals if it appears that the race-neutral approach was not working.

- § 26.53: As applied to ACDBEs, this amended section sets forth the

circumstances in which a prime concessionaire has good cause to terminate an ACDBE firm.

- § 26.71: Under this amended section, the types of work an ACDBE firm can perform must be described in terms of the most specific available NAICS code for that type of work.

- § 26.73: This amended section provides that certification of a firm may not be denied solely on the basis that it is a newly formed firm, has not completed projects or contracts at the time of its application, has not yet realized profits from its activities, or has not demonstrated a potential for success.

- § 26.81: The requirements for Unified Certification Programs (UCPs) were amended to require the UCP to revise the print version of the Directory at least once a year.

- § 26.83: The amended procedures for making certification decisions apply in the ACDBE context. The amendments include a new subsection that addresses the procedure for a certification decision involving an application that was withdrawn and then resubmitted.

- § 26.84: This section was removed in the recently issued Part 26 Final Rule.

- § 26.85: This is a section describing the process of interstate certification for a DBE firm. This includes the information the applicant must provide to the other state ("State B"), what actions State B must take when it receives an application, and appropriate reasons for making a determination that there is good cause to believe that the home state's, State A, certification of the firm is erroneous or should not apply in State B.

Today's final rule also includes the inflationary adjustment of the size limits on small businesses participating in the ACDBE program. On April 3, 2009, the DOT adopted a final rule that required it to adjust the general ACDBE gross receipts caps for inflation every two years using the same method, and to publish a final rule to update the size standard numbers. This final rule updates the ACDBE gross receipts caps that were published on April 3, 2009, to reflect 2011 dollars through the fourth quarter of calendar year 2011.

Comments and Responses

In an effort to ensure that the Part 26 changes made sense in the ACDBE context, the NPRM requested comments on the following as to whether there were terms or concepts in the Part 26 amendments that needed to be modified to conform to Part 23.

Improving Interstate Certification

The Department received one comment from a trade association recommending the issuance of a guidance document to ensure that the objectives of improving interstate certification are achieved. In regards to the § 26.85 process, this same association was concerned that the process for interstate certification for an ACDBE firm would not be applied consistently. They strongly recommended that training be provided to address the special circumstances that arise in the ACDBE context and that a central agency should verify certifications where there were disparate results among different UCPs. The association also strongly recommended that key certification-related elements, such as the certification application and Personal Net Worth (PNW) forms list of requested items, be used without modification.

Another commenter believed that while improvement of interstate certification was a much needed initial step, DOT should adopt a program that recognized certifications nationally for ACDBE firms. This commenter identified several benefits for a national approach, including ease for a national prime concessionaire to solicit ACDBE participation in an airport concession regardless of geographic area, thereby increasing the availability and the participation of ACDBEs as sub-concessionaires. This commenter also noted that a national certification program would assist recipients in reporting car rental accomplishments, since any certified ACDBE utilized by the car rental companies (most of whom are national firms) could be included. The commenter continued by recommending that the rule be amended to allow a recipient to count the participation of an ACDBE firm that is certified in the firm's home state regardless of where the concession is located.

DOT Response

The Department agrees that standardizing forms and interpretations and providing and fostering training for UCP personnel that addresses airport concessions and ACDBE circumstances, can improve consistency in the review of ACDBE applications and in the interstate certification process. In support of these objectives, the Department noted in the final Part 26 rule that it plans to issue a follow-on NPRM that will address improvements in the certification application and PNW forms, which certification agencies then would be required to use without

change. These changes would apply to the ACDBE program as well. However, the Department does not view having a central agency verify an ACDBE's certification status, after receiving disparate results among different UCPs, to be a practical solution. The purpose of the interstate certification process is to address the very issue of disagreements among certifying agencies in a consistent manner. Moreover, there is already an office to which a firm can appeal an ACDBE certification denial decision—the U.S. DOT's Departmental Office of Civil Rights.

The Department had previously requested comments on the issue of nationwide approaches to certification and had responded to those comments in the May 10, 2010, NPRM to Part 26 DBE program improvements (75 FR 25818 (2010)). The approach the Department finally adopted was to first take steps to make interstate certification easier under the current statewide approach to certification. The Department believes that this approach is a significant incremental step toward nationwide reciprocity, which would increase the likelihood of achieving the benefits identified for the ACDBE program.

Regarding the stated need for certification training, we note that there is a requirement in the recently enacted FAA Modernization and Reform Act of 2012 that the Department develop mandatory certification training. The Department is currently considering how best to implement this mandate. In doing so, we can build on existing certification training that the Department already provides through webinars, conferences, and workshops.

Fostering Small Business Participation

Though the Department stated in the NPRM that it would not propose a parallel provision in Part 23 for amended § 26.39 on fostering small business participation, we asked for comments on whether additional small-business-related provisions are needed in the concessions context. The Department explained that its current focus was on applying this provision to Federally-assisted contracting and associated issues such as “unbundling.” Two commenters responded with strong support for including a small business element in the ACDBE program that would unbundle large concession opportunities. They believed that certain business practices presented barriers to equitable participation by ACDBEs. The prime concessionaire model, they said, did not permit small-to-medium size ACDBEs to compete

successfully for prime contract opportunities, as large firms under this model would be allowed to dominate the national marketplace as prime concessionaires. Consequently, this would create a significant obstacle for smaller firms trying to penetrate the market. Another reason given for including a small business element was that ACDBEs faced the same difficulties as other small businesses, such as obtaining loans. The association commenter stated that if a small business element provision was adopted for the ACDBE program, it should allow for a great deal of local flexibility in determining an airport's small business provisions, and that FAA should monitor recipients' programs to ensure that the new small business provision would not undermine the existing ACDBE program. This association also suggested that the FAA should review whether the SBA small business size standards are appropriate for ACDBEs and recommended that the FAA perform increased monitoring and enforcement of the good faith effort provisions. A commenter also suggested that FAA provide more guidance on this provision.

DOT Response

The Department appreciates the comments that have been received on the question regarding additional small business-related provisions in the concessions context. The initial response from commenters indicates there may be barriers to ACDBEs in the concessions program that a small business element may help to alleviate. Although we are not issuing a small business program requirement for the ACDBE program at this time, we will consider these comments in deciding whether to proceed with a small business provision for the ACDBE program in the future. The Department also hopes to learn from airport recipients' implementation of the small business element requirement for the Part 26 program.

Adjusting the Personal Net Worth Cap

To conform to the Part 26 inflationary adjustment in the personal net worth (PNW) cap, the NPRM proposed to amend § 23.35 by substituting \$1.32 million for the current \$750,000 as the personal net worth (PNW) standard. The NPRM explained that the Part 23 PNW provision is separate from the PNW provision in Part 26, so a specific Part 23 amendment was needed to maintain consistency between the two regulations. The ACDBE commenters strongly supported the PNW increase, and they applauded the Department for

increasing the current standard to promote growth among ACDBEs and providing greater access to capital from financial institutions and capital markets.

One commenter, however, disagreed with the use of the Consumer Price Index (CPI) for determining the PNW increase, saying that it presumes erroneously that an ACDBE owner has grown his or her personal worth at the same rate as a non-ACDBE. The commenter suggested instead that the Department conduct an independent analysis to arrive at a PNW amount. The commenter also suggested that there be a lower PNW limit for ACDBEs entering the program, and a higher PNW limit for ACDBEs that are growing and may eventually graduate from the program. Two commenters suggested that further rulemaking was needed to make automatic adjustments to the PNW for inflation. One suggestion was to make the adjustment at a regular interval of every two or three years.

The Department also received several comments on the issue of retirement assets. Two ACDBEs, an ACDBE consultant, and an association strongly supported a change in the rule to exempt retirement assets from the disadvantaged business owner's PNW. Two commenters believed that it would be poor policy to discourage owners from providing for their retirement. They suggested that, as a minimum, certain types of retirement assets, such as company sponsored 401(k), profit sharing, and pension plans, which have capped contributions and are regulated by federal law, should be excluded from the PNW.

DOT Response

The Department has adopted the Part 26 inflationary adjustment of the PNW cap to \$1.32 million for the Part 23 program, with the inflationary adjustment based on the Department of Labor's consumer price index (CPI) calculator. In choosing the CPI, the Department explained in the final Part 26 rule that the CPI appeared to be the one approach that is most relevant to an individual's personal wealth. While no index is perfect, the more complex approaches suggested by some commenters, including the development of a DOT-specific index, do not appear practicable. In the Preamble to the final rule for Part 26, the Department announced that it was not ready at that time to decide the issue of retirement assets. We are still evaluating this matter.

PNW Third Exemption

The NPRM also requested comments on whether the third exemption that is currently a part of the Part 23 PNW definition should be retained in the definition, deleted altogether, modified, or replaced with a different but more workable provision aimed to achieve a similar objective. This third exemption is an exemption from the PNW calculation for "other assets that the individual can document as necessary to obtain financing or a franchise agreement for the initiation or expansion of his or her ACDBE firm (or have in fact been encumbered to support existing financing for the individual's ACDBE business), to a maximum of \$3 million." The NPRM summarized the background and rationale for the third exemption, which was added in the 2005 ACDBE rule (see 70 FR 14497–14499 (March 22, 2005)) to respond to concerns of commenters that a PNW standard of \$750,000 could inhibit opportunities for business owners to enter the concessions field and expand existing businesses. The Department's decision to establish the third exemption was also made in order to preserve the underlying standard PNW for both the Part 23 and Part 26 programs while responding to comments that a higher standard could be justified in some cases in the ACDBE context. The Department also noted in the NPRM that it is aware that the \$3 million exemption from PNW for assets used as collateral for a loan has been difficult to implement, and we asked for comments on how to improve the definition of this exemption so that if retained, the exemption could be implemented more effectively.

Three commenters supported retaining the third exemption, and one commenter opposed it. An association noted that the uniqueness of the ACDBE industry required that ACDBEs have the ability to maintain capital to finance growth, development and expansion. One commenter opposed the exemption because the commenter believed it could be used as a tool to hide assets. This commenter was also concerned that the practice of an ACDBE using its personal property as collateral was not parallel to non-ACDBE business practices. Another commenter said the definition was unclear and that implementation required clarification since there was inconsistent application by UCPs. This commenter noted that the number of applicants using the third exemption was minimal and questioned whether there was a need to retain it. Although we did not receive specific suggestions for improvement, most

commenters on this issue desired more guidance.

Because of the very limited number of responses the Department received to its request for comment on this issue, the FAA engaged a consultant to gather additional information on the subject. (A copy of the consultant's report has been placed in the docket.) The consultant contacted all certifying agencies in the DOT database, ultimately receiving responses from 20 agencies which, among them, had received 16 requests for use of the third exemption over the time the provision had been in effect. Thirteen requests were granted (three of which were approved after appeals to the Departmental Office of Civil Rights). Three requests were denied. There were differences among these agencies in terms of the documentation that they required, and most thought that there was a lack of clarity in the Department's requirement that called for additional guidance and training. Some of the ACDBE firms interviewed said that uncertainty about the application of the provision would deter them from seeking to use the third exemption. The ACDBEs interviewed saw value in the provision, but agreed that further clarification and guidance were needed.

DOT Response

Current evidence indicates that the third exemption is not used frequently, and, when it is, it often appears to be the subject of considerable uncertainty and confusion on the part of ACDBEs and certifying agencies alike. It may be subject to misuse. We believe that further consideration is necessary to determine whether the provision should be retained, modified, or deleted. Further study, including gathering more in-depth information about how the provision has been used to date, would be helpful in making this determination.

However, we recognize that deciding what modifications in the provision, if any, would be needed to clarify the provision, or developing additional guidance to clarify the existing provision, are likely to take a good deal of time. Moreover, this rule's inflationary adjustment of the underlying PNW cap to \$1.32 million, which maintains the real dollar value of the previous \$750,000 cap, may have the effect of mitigating what the Department saw, in 2005, as the need for adopting a provision of this kind. On the other hand, it is possible, given the comments of some program participants, that a provision of this kind can have continuing utility, especially with further clarification, guidance, and training.

For these reasons, the Department has decided neither to continue the existing provision in effect nor to delete it. Rather, the Department is suspending the effectiveness of the provision until further notice. It is important to note that this suspension of the third exemption is prospective, not retroactive. This means that, where a firm applies for ACDBE certification or an existing firm obtains financing, a loan, or a franchise agreement *after* the effective date of this rule change, the third exemption will not apply. In such cases, the only exemptions from the PNW calculation will be the equity the disadvantaged owner of a firm has in his or her primary personal residence and the individual's ownership interest in the ACDBE firm in question.

However, in cases where a recipient or certifying agency has already calculated a firm owner's PNW, based on the third exemption based on financing, a loan, or a franchise agreement obtained *before the effective date of this change*, that calculation will then be allowed to stand. This includes situations in which an original calculation of PNW including the third exemption was made in the context of a certification that is later reviewed. Of course, as the owner pays down a loan, the amount of the owner's assets supporting that loan, and thus the assets that can be exempted from the PNW calculation, will decline with the loan balance. In all cases involving the application of the third exemption, the FAA retains the discretion to examine documents to ensure that the third exemption is being used properly.

Meanwhile, the Department will continue to evaluate this issue and seek additional input from stakeholders before deciding whether ultimately to remove, modify, or replace the third exemption. The Department will also consider what guidance may be helpful in helping recipients to use the third exemption, or a modification of it, if and when its effectiveness is reinstated.

Monitoring the Work of ACDBEs

The NPRM proposed to adopt in § 23.29 the change that was made in § 26.37 concerning enhanced monitoring of the actual performance of work by DBEs. The NPRM explained that airports would be responsible for reviewing documents and actual on-site performance to ensure that ACDBEs were actually performing the work committed to them during the concession award process, and to certify that they have done so to the FAA. All comments received on this issue were in favor of increased monitoring. An association commenter suggested that

the Department and FAA provide guidance on practices that airports might use to monitor effectively the work of ACDBEs, given available resources.

DOT Response

The Department has adopted the proposed change for enhanced monitoring in § 23.29. The FAA also plans to make available to all sponsors a compilation of best practices in monitoring DBE and ACDBE programs. This includes monitoring the work of ACDBEs as a product of the post award compliance reviews that it conducts of airport recipients' DBE and ACDBE programs, and a review of documents obtained from other sources. The FAA plans to develop such a compilation and post the results on its Web site.

Adjusting a Recipient's Overall Goal

The NPRM also asked for comment on the provision in § 23.45(i) concerning the requirement to submit an adjustment to a recipient's overall goal to the FAA if a new concession opportunity estimated to be \$200,000 or more in estimated average annual gross revenues arose at a time that fell between normal submission dates for overall goals. Section 23.45(i) currently requires the recipient to submit its adjustment at least six months before executing the concession agreement for the new concession opportunity. The NPRM asked whether this provision should be retained or changed. Both airport recipient commenters (a large hub and a small hub) and an association commenter objected to the six-month submission requirement to the FAA. All asserted that the six-month submission would impose an undue burden on airport recipients, as it would create long and unacceptable lead times for executing new concession agreements that could result in funding problems for the concessionaire. The small hub airport recipient commenter recommended instead, that FAA require only a one to two month submission time, whereas the large hub airport recipient commenter believed that it was unnecessary to submit an adjustment at all since existing procedures for developing a three-year overall goal accommodate the identification of projected new opportunities.

DOT Response

The Department believes that many airport recipients may still require an adjustment to their overall goal when it has one or more new concession opportunities that, for whatever reason, were not projected in their three-year

plan. Since these opportunities may be significant and may offer ACDBE opportunities, airports are required to conduct an analysis to determine ACDBE availability and whether their overall goal should be adjusted. The reasons for the current requirement for sponsors to submit an adjusted goal at least six-months before executing the concession agreement were to encourage the sponsor to obtain approval from the FAA prior to the issuance of a new concession opportunity that may offer ACDBE opportunities and to provide the FAA a reasonable amount of time to review the airport's submission. In response to the concerns expressed by the two airport sponsors and the association commenter, the Department is making two changes. In place of requiring an adjusted goal submission at least six months before executing the concession agreement, the Department will require that an adjusted goal be submitted to the FAA no later than 90 days prior to the sponsor's issuance of the solicitation. These two changes, the trigger event and the change in the submission deadline to the FAA, should help a sponsor obtain FAA's prior approval of its adjusted overall goal and include any ACDBE participation in the new concession opportunity consistent with the sponsor's approved ACDBE goal. FAA anticipates that it can complete its review within 45 days of receiving the sponsor's adjusted overall goal submission, assuming FAA has received all necessary information and any follow-up clarifications from the sponsor in a timely manner.

Accountability for Meeting Overall Goals

The NPRM proposed to revise § 23.57 to make its accountability provisions parallel to those of the recently amended § 26.47(c). The rationale for doing so is the same as for Part 26. The NPRM requested comments on whether any further modifications of the language of this provision would be useful for purposes of the ACDBE program. Two commenters supported the accountability provision, while two commenters opposed it. Opponents of the accountability provision believed that the inability of the recipient to meet the overall goal was often the result of factors that were beyond their control. One small hub airport commenter said that revenue generation was not in the control of the airport and that its experience was that the concessionaire often did not meet its ACDBE goal, but had to show its good faith efforts instead. Another commenter said there were events and fluctuations, such as shifts in airline traffic, which were

beyond the control of the operator and could impact achievement. This commenter added that there may not be new opportunities available to make up for shortfalls in the overall goal achievement. Another commenter who opposed the provision said it would produce an undue burden for airport recipients. The commenter said that it already had a process that worked to correct goal shortfalls. Two commenters suggested that the threshold for shortfall be clearly defined. The airport recipient commenters were concerned about being placed in a "non-compliant" status. Due to the seriousness of being considered "non-compliant," one commenter suggested that recipients should be given the opportunity to make corrections before a non-compliance determination is made by the FAA. Another commenter suggested that it simply submit a report as part of its annual accomplishment report that would allow for a fuller explanation of why it was unable to meet its overall goals, rather than be judged "non-complaint". One commenter suggested that the regulation list acceptable corrective actions and that recipients be allowed to modify their overall goal if the analysis supported the modification.

DOT Response

We agree that achievement of concession goals may vary over time, in part because concession receipts are driven by events that are beyond an airport's control. Factors of this kind may increase or decrease ACDBE achievements, compared to earlier projections. We do not believe, however, that these or other factors or any other factors should override the obligation of airport recipients to examine their concessions program in good faith and to explain and attempt to correct for circumstances or policies that may lead to shortfalls in meeting overall ACDBE goals. This examination, for example, may lead to a recommendation to take advantage of contract changes to negotiate for increased ACDBE participation that may not have been contemplated before, to discuss with ACDBEs and other concessionaires potential new opportunities, or to plan for future ACDBE participation through an extensive and comprehensive outreach program. When shortfalls can rationally be attributed specifically to factors beyond an airport's control, the airport would still explain it shortfall by reference to such factors. A requirement to report the analysis and corrective action called for under § 23.57(b)(3) to the FAA is imposed only on the CORE

30 airports,¹ or other airports as designated by the FAA, in order to limit information collection burdens on other airports.

As we explained in the preamble to the final rule for Part 26, the accountability mechanism is designed to promote transparency and accountability, and it is not the same as a finding of non-compliance. An airport recipient would only be in non-compliance if it refuses to make an accountability assessment when it falls below its overall goal. We also addressed the issue of administrative burden in the previously mentioned preamble. We do not believe that any work needed to meet this requirement is “undue,” because the steps of an accountability review for recipients who fail to meet their overall goal should be a regular part of their program review when a key business objective is not met. Therefore, we are retaining the proposed accountability provision.

ACDBE Gross Receipts Size Standards

Under the current DOT rule, if the airport concessions firm’s annual gross receipts average over the preceding three fiscal years exceed \$52,470,000, then it is not considered a small business eligible to be certified as an ACDBE. This final rule makes an inflationary adjustment to the size standards for eligibility as an ACDBE. This adjustment compensates for the rise in the general level of prices over time from the first quarter of calendar year 2009 through the fourth quarter of calendar year 2011. It should be emphasized that this action does not increase the size standard for ACDBES in real dollar terms. It simply maintains the status quo, adjusting to 2011 dollars.

In order to make an inflation adjustment to the gross receipts figures, the Department of Transportation uses a Department of Commerce price index. The Department of Commerce’s Bureau of Economic Analysis prepares constant dollar estimates of state and local government purchases of goods and services by deflating current dollar estimates by suitable price indices.² These indices include purchases of durable and non-durable goods, and other services. Using these price deflators enables the Department to adjust dollar figures for past years’ inflation. Given the nature of the

Department’s ACDBE program, adjusting the gross receipts cap in the same manner in which inflation adjustments are made to the costs of state and local government purchases of goods and services is simple, accurate, and fair.

The inflation rate on purchases by state and local governments for the current year is calculated by dividing the price deflator for the fourth quarter of calendar year 2011 (123.622) by calendar year 2009’s first quarter price deflator (114.971). The result of the calculation is 1.0752, which represents an inflation rate of 1.075% from the first quarter of calendar year 2009. Multiplying the \$52,470,000 figure for small business enterprises by 1.0752 equals \$ 56,415,744, which will be rounded off to the nearest \$10,000, or \$56,420,000.

Therefore, under this final rule, if a firm’s gross receipts, averaged over the firm’s previous three fiscal years, exceeds \$56,420,000, then it exceeds the airport concessions small business size limit contained in § 23.33.

ACDBE Car Rental Company Size Standards

Under the existing rule, car rental companies are not eligible to participate in the ACDBE program if their average gross receipts over the three previous fiscal years exceed \$69,970,000. This final rule adjusts the size standard for car rental companies to reflect the effects of inflation on the real dollar value.

The inflation rate on purchases by state and local governments for 2011 is calculated by dividing the price deflator for the fourth quarter of calendar year 2011 (123.622) by calendar year 2009’s first quarter price deflator (114.971). The result of the calculation is 1.0752, which represents an inflation rate of 1.075% from the first quarter of calendar year 2009. Multiplying the \$69,970,000 figure for car rental companies by 1.0752 equals \$75,231,744, which will be rounded off to the nearest \$10,000, or \$75,230,000.

Therefore, under this final rule, if a car rental company’s gross receipts, averaged over the company’s previous three fiscal years, exceeds \$75,230,000, then it exceeds the airport concessions car rental company size limit contained in § 23.33.

Regulatory Analyses and Notices

Administrative Procedure Act

Under the Administrative Procedure Act (5 U.S.C. 553(b)), an agency may waive the normal notice and comment requirements if it finds that they are

impracticable, unnecessary, or contrary to the public interest. The Department finds that notice and comment for the portion of the rule at § 23.33 relating to inflationary adjustment of size limits for ACDBE eligibility is unnecessary and contrary to the public interest because it relates only to ministerial updates of business size standards to account for inflation, which does not change the standards in real dollar terms. These updates will assist entities attempting to be part of the Department’s ACDBE program and should not be unnecessarily delayed. Accordingly, the Department finds good cause under 5 U.S.C. 553(b) to waive notice and opportunity for public comment. Other provisions of the final rule were preceded by an opportunity for notice and comment.

In addition, under the Administrative Procedure Act (5 U.S.C. 553(d)), an agency may make a final rule effective immediately upon publication, as distinct from the normal 30 days following publication, if it relieves a restriction or otherwise for good cause. The Department is making the amendments to §§ 23.3 and 23.35 effective immediately. The amendment to § 23.3 suspends prospectively, until further notice, the “third exemption” from the definition of personal net worth. Failure to make this suspension effective immediately would create a clear incentive for potential applicants to hurry their applications to recipients in order to “beat the clock.” The Department has good cause to make the change effective immediately to prevent this foreseeable result of the normal 30-day delay in the effective date of a final rule provision.

The amendment to § 23.35 harmonizes the personal net worth criterion of the ACDBE (49 CFR part 23) with that of the DBE rule (49 CFR part 26), which the Department adjusted for inflation in 2011. Both will now be \$1.32 million. This action relieves a restriction on the personal net worth that may be held by an ACDBE owner, which previously had been limited to \$750,000. The Department has good cause for making this change effective upon publication because failing to do would expose otherwise eligible firms to the denial of ACDBE certification on the basis of an about-to-change personal net worth criterion, potentially causing these firms to lose business opportunities. In addition, it makes sense to have this provision go into effect at the same time as the suspension of the third exemption.

¹ The 30 CORE airports presently handle 63 percent of the country’s passengers and 68 percent of its operations.

² See Bureau of Economic Analysis National Income and Product Account Table; Table 3.10.4 Price Indexes for Government Consumption Expenditures and General Government Gross Output.

Executive Orders 12866 and 13422 and DOT Regulatory Policies and Procedures

This is a non-significant regulation for purposes of Executive Orders 12866 13422 and the Department of Transportation's Regulatory Policies and Procedures. The provisions in the rule involve administrative modifications to several provisions of a long-existing and well-established program, designed to improve the program's implementation and to harmonize these provisions with parallel provisions in the January 2011 amendments to 49 CFR part 26, the Department's DBE rule for financial assistance programs, which was itself a non-significant rulemaking. These portions of the rule do not alter the direction of the program, make major policy changes, or impose significant new costs or burdens.

One provision of the rule concerns a ministerial adjustment for inflation of a small business size standard that does not change the standard in real dollar terms. This provision will not impose burdens on any regulated parties. In addition, this provision would not create inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required for the rule.

Regulatory Flexibility Act

A number of provisions of the rule reduce small business burdens or increase opportunities for small businesses. The personal net worth change would allow some small businesses to remain in the ACDBE program for a longer period of time. Small airport recipients would not be required to prepare or transmit reports concerning the reasons for overall goal shortfalls and corrective action steps to be taken as stated in § 23.57. Only a limited number of large airports would have to file these reports. These provisions of the rule do not make major policy changes that would cause recipients to expend significant resources on program modifications. With regard to the provision on inflationary adjustment of ACDBE size limits, we have evaluated the effects of this action on small entities and have determined that the only effect of this portion of the rule on small entities is to allow some small businesses to continue to participate in the ACDBE program by adjusting for inflation. For these reasons, the Department certifies that the rule does not have a significant economic effect on a substantial number of small entities.

Federalism

A rule has implications for federalism under Executive Order 13132, *Federalism*, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under the Order and have determined that it does not have significant implications for Federalism, since it merely makes administrative modifications to an existing program, and updates the dollar limits and size limits to define small businesses for the Department's ACDBE program. It does not change the relationship between the Department and State or local governments, preempt State law or State regulation, affect the States' ability to discharge traditional State governmental functions, or impose substantial direct compliance costs on those governments.

Unfunded Mandates Reform Act of 1995

Since this rule pertains to a nondiscrimination requirement and affects only Federal financial assistance programs, the Unfunded Mandates Act does not apply.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995, DOT has submitted the Information Collection Requests (ICRs) below to the Office of Management and Budget (OMB). Before OMB decides whether to approve these proposed collections of information and issue a control number, the public must be provided 30 days to comment. Organizations and individuals desiring to submit comments on the collections of information in this rule should direct them to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, Office of Information and Regulatory Affairs, Washington, DC 20503. OMB is required to make a decision concerning the collection of information requirements contained in this rule between 30 and 60 days after publication of this document in the **Federal Register**. The Department's NPRM included the requisite PRA information. OMB did not submit comments to the rulemaking docket. As provided in 5 CFR 1320.11(h), the Department will submit relevant material to OMB in order to receive an OMB control number for the information collections. The Department will publish a **Federal Register** notice concerning the assignment of a control number when that occurs.

We will respond to any OMB or public comments on the information collection requirements contained in this rule. The Department will not impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required.

For the information of interested persons we estimate that the total incremental annual burden hours for the information collection requirements in this rule is 13,101 hours.

The following is the incremental collection requirement in this rule:

Certification of Monitoring: (49 CFR 23.29)

Each recipient would certify that it had conducted post-award monitoring of contracts which would be counted for ACDBE credit to ensure that ACDBEs had done the work for which credit was claimed. The certification is for the purpose of ensuring accountability for contract monitoring which the regulation already requires.

Respondents: 301 (i.e., airports with covered concessions).

Frequency: 1,311 non-car rental contracts to ACDBEs; 691 car rental concession contracts to ACDBEs, for a total of 2,002, or an average of 6.7 ACDBE contracts per airport.

Estimated Burden per Response: 1/2 hour.

Estimated Total Annual Burden: 1,001 hours.

Accountability Mechanism (49 CFR 23.57)

If a recipient failed to meet its overall goal in a given year, it would have to determine the reason for its failure and establish corrective steps. Of the 301 airports covered by this rule, 30 of the largest recipients would transmit this analysis to DOT if their overall goal was not achieved; smaller recipients would perform the analysis but would not be required to submit it to DOT. We estimate that about half of the recipients (150) would be subject to this requirement in a given year, and 20 of the 30 largest airports would have to submit their reports to the FAA in a given year.

Respondents: 150.

Estimated Average Burden per Response: 80 hours + 5 additional hours for recipients sending report to DOT. Total number of recipients sending report to DOT: 20.

Estimated Total Annual Burden: 12,100 hours.

List of Subjects in 49 CFR Part 23

Administrative practice and procedure, Airports, Civil rights,

Concessions, Government contracts, Grant programs—transportation, Minority businesses, Reporting and recordkeeping requirements.

Issued this 7th Day of June 2012 at Washington DC.

Ray LaHood,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department of Transportation amends 49 CFR part 23 as follows:

PART 23—PARTICIPATION OF DISADVANTAGED BUSINESS ENTERPRISE IN AIRPORT CONCESSIONS

■ 1. The authority citation for part 23 continues to read as follows:

Authority: 49 U.S.C. 47107; 42 U.S.C. 2000d; 49 U.S.C. 322; Executive Order 12138.

■ 2. In § 23.3, revise the definition of “personal net worth” to read as follows:

§ 23.3 What do the terms used in this part mean?

* * * * *

Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth (PNW) does not include the following:

(1) The individual's ownership interest in an ACDBE firm or a firm that is applying for ACDBE certification; (2) The individual's equity in his or her primary place of residence; and (3) Other assets that the individual can document are necessary to obtain financing or a franchise agreement for the initiation or expansion of his or her ACDBE firm (or have in fact been encumbered to support existing financing for the individual's ACDBE business) to a maximum of \$3 million. The effectiveness of this paragraph (3) of this definition is suspended with respect to any application for ACDBE certification made or any financing or franchise agreement obtained after June 20, 2012.

* * * * *

■ 3. Revise § 23.29 to read as follows:

§ 23.29 What monitoring and compliance procedures must recipients follow?

As a recipient, you must implement appropriate mechanisms to ensure compliance with the requirements of this part by all participants in the program. You must include in your concession program the specific provisions to be inserted into concession agreements and management contracts setting forth the enforcement mechanisms and other means you use to

ensure compliance. These provisions must include a monitoring and enforcement mechanism to verify that the work committed to ACDBEs is actually performed by the ACDBEs. This mechanism must include a written certification that you have reviewed records of all contracts, leases, joint venture agreements, or other concession-related agreements and monitored the work on-site at your airport for this purpose. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of concession performance for other purposes.

■ 4. Revise § 23.33 to read as follows:

§ 23.33 What size standards do recipients use to determine the eligibility of ACDBEs?

(a) As a recipient, you must, except as provided in paragraph (b) of this section, treat a firm as a small business eligible to be certified as an ACDBE if its gross receipts, averaged over the firm's previous three fiscal years, do not exceed \$56.42 million.

(b) The following types of businesses have size standards that differ from the standard set forth in paragraph (a) of this section:

(1) *Banks and financial institutions:* \$1 billion in assets;

(2) *Car rental companies:* \$75.23 million average annual gross receipts over the firm's three previous fiscal years, as adjusted by the Department for inflation every two years from April 3, 2009.

(3) *Pay telephones:* 1,500 employees;

(4) *Automobile dealers:* 350 employees.

(c) The Department adjusts the numbers in paragraphs (a) and (b)(2) of this section using the Department of Commerce price deflators for purchases by State and local governments as the basis for this adjustment. The Department publishes a **Federal Register** document informing the public of each adjustment.

§ 23.35 [Amended]

■ 5. In § 23.35, remove the number “\$750,000” and add in its place “\$1.32 million”.

■ 6. Revise § 23.45(i) to read as follows:

§ 23.45 What are the requirements for submitting overall goal information to the FAA?

* * * * *

(i) If a new concession opportunity, the estimated average annual gross revenues of which are anticipated to be \$200,000 or greater, arises at a time that falls between normal submission dates for overall goals, you must submit an appropriate adjustment to your overall

goal to the FAA for approval no later than 90 days before issuing the solicitation for the new concession opportunity.

■ 7. Revise § 23.57(b) and (c) to read as follows:

§ 23.57 What happens if a recipient falls short of meeting its overall goals?

* * * * *

(b) If the awards and commitments shown on your Uniform Report of ACDBE Participation (found in Appendix A to this Part) at the end of any fiscal year are less than the overall goal applicable to that fiscal year, you must do the following in order to be regarded by the Department as implementing your ACDBE program in good faith:

(1) Analyze in detail the reasons for the difference between the overall goal and your awards and commitments in that fiscal year;

(2) Establish specific steps and milestones to correct the problems you have identified in your analysis and to enable you to meet fully your goal for the new fiscal year;

(3) (i) If you are a CORE 30 airport or other airport designated by the FAA, you must submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (b)(1) and (2) of this section to the FAA for approval. If the FAA approves the report, you will be regarded as complying with the requirements of this section for the remainder of the fiscal year.

(ii) As an airport not meeting the criteria of paragraph (b)(3)(i) of this section, you must retain analysis and corrective actions in your records for three years and make it available to the FAA, on request, for their review.

(4) The FAA may impose conditions on the recipient as part of its approval of the recipient's analysis and corrective actions including, but not limited to, modifications to your overall goal methodology, changes in your race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.

(5) You may be regarded as being in noncompliance with this part, and therefore subject to the remedies in § 23.11 of this part and other applicable regulations, for failing to implement your ACDBE program in good faith if any of the following things occur:

(i) You do not submit your analysis and corrective actions to FAA in a timely manner as required under paragraph (b)(3) of this section;

(ii) FAA disapproves your analysis or corrective actions; or

(iii) You do not fully implement:

(A) The corrective actions to which you have committed, or

(B) Conditions that FAA has imposed following review of your analysis and corrective actions.

(C) If information coming to the attention of FAA demonstrates that current trends make it unlikely that you, as an airport, will achieve ACDBE awards and commitments that would be necessary to allow you to meet your overall goal at the end of the fiscal year, FAA may require you to make further good faith efforts, such as modifying your race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

[FR Doc. 2012-14893 Filed 6-19-12; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 375

[Docket No. FMCSA-2012-0119]

RIN 2126-AB52

Transportation of Household Goods in Interstate Commerce; Consumer Protection Regulations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) amends the regulations governing the transportation of household goods to remove an obsolete requirement related to collect calls, resolve ambiguities, and reduce a regulatory burden on household goods motor carriers.

DATES: This final rule is effective August 20, 2012, unless an adverse comment, or notice of intent to submit an adverse comment, is either submitted to the above docket via <http://www.regulations.gov> on or before July 20, 2012 or reaches the Docket Management Facility by that date. If an adverse comment, or notice of intent to submit an adverse comment, is received by July 20, 2012, FMCSA will withdraw this direct final rule and publish a timely notice of withdrawal in the **Federal Register**.

ADDRESSES: You may submit comments identified by docket number FMCSA-2012-0119 using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30) West Building Ground Floor Room W12-140, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these methods. See the "Public Participation and Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. Brodie Mack, FMCSA, Household Goods Team Leader, Commercial Enforcement and Investigations Division at (202) 385-2400 or by email at brodie.mack@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Comments

If you would like to participate in this rulemaking, you may submit comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (FMCSA-2012-0119), indicate the specific section of this direct final rule to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that the Agency can contact you if it has questions regarding your submission. As a reminder, FMCSA will only consider adverse comments as defined in 49 CFR 389.39(b) and explained below.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Final Rule" and insert "FMCSA-2012-0119" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches,

suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Docket Management Facility, please enclose a stamped, self-addressed postcard or envelope.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "FMCSA-2012-0119" and click "Search." Click the "Open Docket Folder" in the "Actions" column. If you do not have access to the Internet, you may also view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

II. Regulatory Information

FMCSA publishes this direct final rule under 49 CFR 389.39 because the Agency determined that the rule is a routine and non-controversial amendment to 49 CFR part 375. This rule clarifies that certain independent delivery services are not household goods motor carriers, removes an obsolete provision requiring household goods motor carriers to post notices relating to acceptance of collect telephone calls, clarifies the Agency's requirement that re-negotiated estimates contain detailed descriptions of the goods or services that gave rise to the re-negotiation, and requires household goods motor carriers that relinquish possession of goods to permanent storage to do so in the shipper's name. If no adverse comments, or notices of intent to submit an adverse comment, are received by July 20, 2012, this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days before the effective date, FMCSA will publish a document in the **Federal Register** stating that no adverse comments were



U. S. Small Business Administration

Table of Small Business Size Standards

Matched to

North American Industry Classification System Codes

This table lists small business size standards matched to industries described in the North American Industry Classification System (NAICS), as modified by the Office of Management and Budget effective January 1, 2012. The latest NAICS codes are referred to as NAICS 2012.

The size standards are for the most part expressed in either millions of dollars (those preceded by "\$") or number of employees (those without the "\$"). A size standard is the largest that a concern can be and still qualify as a small business for Federal Government programs. For the most part, size standards are the average annual receipts or the average employment of a firm. How to calculate average annual receipts and average employment of a firm can be found in 13 CFR § 121.104 and 13 CFR § 121.106, respectively.

SBA also includes the table of size standards in the Small Business Size Regulations, 13 CFR § 121.201. This table includes size standards that have changed since the last publication of 13 CFR § 121.

For more information on these size standards, please visit <http://www.sba.gov/size>.

If you have any other questions concerning size standards, contact a Size Specialist at your nearest SBA Government Contracting Area Office (list at the end of the table), or contact the Office of Size Standards by email at sizestandards@sba.gov or by phone at (202) 205-6618.

These size standards are effective July 22, 2013

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
Sector 11 – Agriculture, Forestry, Fishing and Hunting			
Subsector 111 – Crop Production			
111110	Soybean Farming	\$0.75	
111120	Oilseed (except Soybean) Farming	\$0.75	
111130	Dry Pea and Bean Farming	\$0.75	
111140	Wheat Farming	\$0.75	
111150	Corn Farming	\$0.75	
111160	Rice Farming	\$0.75	
111191	Oilseed and Grain Combination Farming	\$0.75	
111199	All Other Grain Farming	\$0.75	
111211	Potato Farming	\$0.75	
111219	Other Vegetable (except Potato) and Melon Farming	\$0.75	
111310	Orange Groves	\$0.75	
111320	Citrus (except Orange) Groves	\$0.75	
111331	Apple Orchards	\$0.75	
111332	Grape Vineyards	\$0.75	
111333	Strawberry Farming	\$0.75	
111334	Berry (except Strawberry) Farming	\$0.75	
111335	Tree Nut Farming	\$0.75	
111336	Fruit and Tree Nut Combination Farming	\$0.75	
111339	Other Noncitrus Fruit Farming	\$0.75	
111411	Mushroom Production	\$0.75	
111419	Other Food Crops Grown Under Cover	\$0.75	
111421	Nursery and Tree Production	\$0.75	
111422	Floriculture Production	\$0.75	
111910	Tobacco Farming	\$0.75	
111920	Cotton Farming	\$0.75	
111930	Sugarcane Farming	\$0.75	
111940	Hay Farming	\$0.75	
111991	Sugar Beet Farming	\$0.75	
111992	Peanut Farming	\$0.75	
111998	All Other Miscellaneous Crop Farming	\$0.75	
Subsector 112 – Animal Production and Aquaculture			
112111	Beef Cattle Ranching and Farming	\$0.75	
112112	Cattle Feedlots	\$7.0	
112120	Dairy Cattle and Milk Production	\$0.75	

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
112210	Hog and Pig Farming	\$0.75	
112310	Chicken Egg Production	\$14.0	
112320	Broilers and Other Meat Type Chicken Production	\$0.75	
112330	Turkey Production	\$0.75	
112340	Poultry Hatcheries	\$0.75	
112390	Other Poultry Production	\$0.75	
112410	Sheep Farming	\$0.75	
112420	Goat Farming	\$0.75	
112511	Finfish Farming and Fish Hatcheries	\$0.75	
112512	Shellfish Farming	\$0.75	
112519	Other Aquaculture	\$0.75	
112910	Apiculture	\$0.75	
112920	Horses and Other Equine Production	\$0.75	
112930	Fur-Bearing Animal and Rabbit Production	\$0.75	
112990	All Other Animal Production	\$0.75	
Subsector 113 – Forestry and Logging			
113110	Timber Tract Operations	\$10.0	
113210	Forest Nurseries and Gathering of Forest Products	\$10.0	
113310	Logging		500
Subsector 114 – Fishing, Hunting and Trapping			
114111	Finfish Fishing	\$19.0	
114112	Shellfish Fishing	\$5.0	
114119	Other Marine Fishing	\$7.0	
114210	Hunting and Trapping	\$5.0	
Subsector 115 – Support Activities for Agriculture and Forestry			
115111	Cotton Ginning	\$10.0	
115112	Soil Preparation, Planting, and Cultivating	\$7.0	
115113	Crop Harvesting, Primarily by Machine	\$7.0	
115114	Postharvest Crop Activities (except Cotton Ginning)	\$25.5	
115115	Farm Labor Contractors and Crew Leaders	\$14.0	
115116	Farm Management Services	\$7.0	
115210	Support Activities for Animal Production	\$7.0	
115310	Support Activities for Forestry	\$7.0	
<i>Except,</i>	Forest Fire Suppression ¹⁷	\$17.5 ¹⁷	
<i>Except,</i>	Fuels Management Services ¹⁷	\$17.5 ¹⁷	

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
Sector 21 – Mining, Quarrying, and Oil and Gas Extraction			
Subsector 211 – Oil and Gas Extraction			
211111	Crude Petroleum and Natural Gas Extraction		500
211112	Natural Gas Liquid Extraction		500
Subsector 212 – Mining (except Oil and Gas)			
212111	Bituminous Coal and Lignite Surface Mining		500
212112	Bituminous Coal Underground Mining		500
212113	Anthracite Mining		500
212210	Iron Ore Mining		500
212221	Gold Ore Mining		500
212222	Silver Ore Mining		500
212231	Lead Ore and Zinc Ore Mining		500
212234	Copper Ore and Nickel Ore Mining		500
212291	Uranium-Radium-Vanadium Ore Mining		500
212299	All Other Metal Ore Mining		500
212311	Dimension Stone Mining and Quarrying		500
212312	Crushed and Broken Limestone Mining and Quarrying		500
212313	Crushed and Broken Granite Mining and Quarrying		500
212319	Other Crushed and Broken Stone Mining and Quarrying		500
212321	Construction Sand and Gravel Mining		500
212322	Industrial Sand Mining		500
212324	Kaolin and Ball Clay Mining		500
212325	Clay and Ceramic and Refractory Minerals Mining		500
212391	Potash, Soda, and Borate Mineral Mining		500
212392	Phosphate Rock Mining		500
212393	Other Chemical and Fertilizer Mineral Mining		500
212399	All Other Nonmetallic Mineral Mining		500
Subsector 213 – Support Activities for Mining			
213111	Drilling Oil and Gas Wells		500
213112	Support Activities for Oil and Gas Operations	\$35.5	
213113	Support Activities for Coal Mining	\$19.0	
213114	Support Activities for Metal Mining	\$19.0	
213115	Support Activities for Nonmetallic Minerals (except Fuels)	\$7.0	

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
Sector 22 – Utilities			
Subsector 221 – Utilities			
221111	Hydroelectric Power Generation	4 million megawatt hours ¹	
221112	Fossil Fuel Electric Power Generation	4 million megawatt hours ¹	
221113	Nuclear Electric Power Generation	4 million megawatt hours ¹	
221114	Solar Electric Power Generation	4 million megawatt hours ¹	
221115	Wind Electric Power Generation	4 million megawatt hours ¹	
221116	Geothermal Electric Power Generation	4 million megawatt hours ¹	
221117	Biomass Electric Power Generation	4 million megawatt hours ¹	
221118	Other Electric Power Generation	4 million megawatt hours ¹	
221121	Electric Bulk Power Transmission and Control	4 million megawatt hours ¹	
221122	Electric Power Distribution	4 million megawatt hours ¹	
221210	Natural Gas Distribution		500
221310	Water Supply and Irrigation Systems	\$7.0	
221320	Sewage Treatment Facilities	\$7.0	
221330	Steam and Air-Conditioning Supply	\$12.5	

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
Sector 23 – Construction			
Subsector 236 – Construction of Buildings			
236115	New Single-family Housing Construction (Except For-Sale Builders)	\$33.5	
236116	New Multifamily Housing Construction (except For-Sale Builders)	\$33.5	
236117	New Housing For-Sale Builders	\$33.5	
236118	Residential Remodelers	\$33.5	
236210	Industrial Building Construction	\$33.5	
236220	Commercial and Institutional Building Construction	\$33.5	
Subsector 237 – Heavy and Civil Engineering Construction			
237110	Water and Sewer Line and Related Structures Construction	\$33.5	
237120	Oil and Gas Pipeline and Related Structures Construction	\$33.5	
237130	Power and Communication Line and Related Structures Construction	\$33.5	
237210	Land Subdivision	\$7.0	
237310	Highway, Street, and Bridge Construction	\$33.5	
237990	Other Heavy and Civil Engineering Construction	\$33.5	
<i>Except,</i>	Dredging and Surface Cleanup Activities ²	\$20.0 ²	
Subsector 238 – Specialty Trade Contractors			
238110	Poured Concrete Foundation and Structure Contractors	\$14.0	
238120	Structural Steel and Precast Concrete Contractors	\$14.0	
238130	Framing Contractors	\$14.0	
238140	Masonry Contractors	\$14.0	
238150	Glass and Glazing Contractors	\$14.0	
238160	Roofing Contractors	\$14.0	
238170	Siding Contractors	\$14.0	
238190	Other Foundation, Structure, and Building Exterior Contractors	\$14.0	
238210	Electrical Contractors and Other Wiring Installation Contractors	\$14.0	
238220	Plumbing, Heating, and Air-Conditioning Contractors	\$14.0	
238290	Other Building Equipment Contractors	\$14.0	
238310	Drywall and Insulation Contractors	\$14.0	

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
238320	Painting and Wall Covering Contractors	\$14.0	
238330	Flooring Contractors	\$14.0	
238340	Tile and Terrazzo Contractors	\$14.0	
238350	Finish Carpentry Contractors	\$14.0	
238390	Other Building Finishing Contractors	\$14.0	
238910	Site Preparation Contractors	\$14.0	
238990	All Other Specialty Trade Contractors ¹³	\$14.0 ¹³	
Sector 31 – 33 – Manufacturing			
Subsector 311 – Food Manufacturing			
311111	Dog and Cat Food Manufacturing		500
311119	Other Animal Food Manufacturing		500
311211	Flour Milling		500
311212	Rice Milling		500
311213	Malt Manufacturing		500
311221	Wet Corn Milling		750
311224	Soybean and Other Oilseed Processing		1,000
311225	Fats and Oils Refining and Blending		1,000
311230	Breakfast Cereal Manufacturing		1,000
311313	Beet Sugar Manufacturing		750
311314	Cane Sugar Manufacturing		750
311340	Nonchocolate Confectionery Manufacturing		500
311351	Chocolate and Confectionery Manufacturing from Cacao Beans		500
311352	Confectionery Manufacturing from Purchased Chocolate		500
311411	Frozen Fruit, Juice and Vegetable Manufacturing		500
311412	Frozen Specialty Food Manufacturing		500
311421	Fruit and Vegetable Canning ³		500 ³
311422	Specialty Canning		1,000
311423	Dried and Dehydrated Food Manufacturing		500
311511	Fluid Milk Manufacturing		500
311512	Creamery Butter Manufacturing		500
311513	Cheese Manufacturing		500
311514	Dry, Condensed, and Evaporated Dairy Product Manufacturing		500
311520	Ice Cream and Frozen Dessert Manufacturing		500
311611	Animal (except Poultry) Slaughtering		500

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
311612	Meat Processed from Carcasses		500
311613	Rendering and Meat Byproduct Processing		500
311615	Poultry Processing		500
311710	Seafood Product Preparation and Packaging		500
311811	Retail Bakeries		500
311812	Commercial Bakeries		500
311813	Frozen Cakes, Pies, and Other Pastries Manufacturing		500
311821	Cookie and Cracker Manufacturing		750
311824	Dry Pasta, Dough, and Flour Mixes Manufacturing from Purchased Flour		500
311830	Tortilla Manufacturing		500
311911	Roasted Nuts and Peanut Butter Manufacturing		500
311919	Other Snack Food Manufacturing		500
311920	Coffee and Tea Manufacturing		500
311930	Flavoring Syrup and Concentrate Manufacturing		500
311941	Mayonnaise, Dressing and Other Prepared Sauce Manufacturing		500
311942	Spice and Extract Manufacturing		500
311991	Perishable Prepared Food Manufacturing		500
311999	All Other Miscellaneous Food Manufacturing		500
Subsector 312 – Beverage and Tobacco Product Manufacturing			
312111	Soft Drink Manufacturing		500
312112	Bottled Water Manufacturing		500
312113	Ice Manufacturing		500
312120	Breweries		500
312130	Wineries		500
312140	Distilleries		750
312230	Tobacco Manufacturing		1,000
Subsector 313 – Textile Mills			
313110	Fiber, Yarn, and Thread Mills		500
313210	Broadwoven Fabric Mills		1,000
313220	Narrow Fabric Mills and Schiffli Machine Embroidery		500
313230	Nonwoven Fabric Mills		500
313240	Knit Fabric Mills		500
313310	Textile and Fabric Finishing Mills		1,000
313320	Fabric Coating Mills		1,000

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
Subsector 314 – Textile Product Mills			
314110	Carpet and Rug Mills		500
314120	Curtain and Linen Mills		500
314910	Textile Bag and Canvas Mills		500
314994	Rope, Cordage, Twine, Tire Cord, and Tire Fabric Mills		1,000
314999	All Other Miscellaneous Textile Product Mills		500
Subsector 315 – Apparel Manufacturing			
315110	Hosiery and Sock Mills		500
315190	Other Apparel Knitting Mills		500
315210	Cut and Sew Apparel Contractors		500
315220	Men's and Boys' Cut and Sew Apparel Manufacturing		500
315240	Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing		500
315280	Other Cut and Sew Apparel Manufacturing		500
315990	Apparel Accessories and Other Apparel Manufacturing		500
Subsector 316 – Leather and Allied Product Manufacturing			
316110	Leather and Hide Tanning and Finishing		500
316210	Footwear Manufacturing		1,000
316992	Women's Handbag and Purse Manufacturing		500
316998	All Other Leather Good and Allied Product Manufacturing		500
Subsector 321 – Wood Product Manufacturing			
321113	Sawmills		500
321114	Wood Preservation		500
321211	Hardwood Veneer and Plywood Manufacturing		500
321212	Softwood Veneer and Plywood Manufacturing		500
321213	Engineered Wood Member (except Truss) Manufacturing		500
321214	Truss Manufacturing		500
321219	Reconstituted Wood Product Manufacturing		500
321911	Wood Window and Door Manufacturing		500
321912	Cut Stock, Resawing Lumber, and Planing		500
321918	Other Millwork (including Flooring)		500
321920	Wood Container and Pallet Manufacturing		500
321991	Manufactured Home (Mobile Home) Manufacturing		500

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
321992	Prefabricated Wood Building Manufacturing		500
321999	All Other Miscellaneous Wood Product Manufacturing		500
Subsector 322 – Paper Manufacturing			
322110	Pulp Mills		750
322121	Paper (except Newsprint) Mills		750
322122	Newsprint Mills		750
322130	Paperboard Mills		750
322211	Corrugated and Solid Fiber Box Manufacturing		500
322212	Folding Paperboard Box Manufacturing		750
322219	Other Paperboard Container Manufacturing		750
322220	Paper Bag and Coated and Treated Paper Manufacturing		500
322230	Stationery Product Manufacturing		500
322291	Sanitary Paper Product Manufacturing		500
322299	All Other Converted Paper Product Manufacturing		500
Subsector 323 – Printing and Related Support Activities			
323111	Commercial Printing (except Screen and Books)		500
323113	Commercial Screen Printing		500
323117	Books Printing		500
323120	Support Activities for Printing		500
Subsector 324 – Petroleum and Coal Products Manufacturing			
324110	Petroleum Refineries ⁴		1,500 ⁴
324121	Asphalt Paving Mixture and Block Manufacturing		500
324122	Asphalt Shingle and Coating Materials Manufacturing		750
324191	Petroleum Lubricating Oil and Grease Manufacturing		500
324199	All Other Petroleum and Coal Products Manufacturing		500
Subsector 325 – Chemical Manufacturing			
325110	Petrochemical Manufacturing		1,000
325120	Industrial Gas Manufacturing		1,000
325130	Synthetic Dye and Pigment Manufacturing		1,000
325180	Other Basic Inorganic Chemical Manufacturing		1,000
325193	Ethyl Alcohol Manufacturing		1,000
325194	Cyclic Crude, Intermediate, and Gum and Wood Chemical Manufacturing		750
325199	All Other Basic Organic Chemical Manufacturing		1,000

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
325211	Plastics Material and Resin Manufacturing		750
325212	Synthetic Rubber Manufacturing		1,000
325220	Artificial and Synthetic Fibers and Filaments Manufacturing		1,000
325311	Nitrogenous Fertilizer Manufacturing		1,000
325312	Phosphatic Fertilizer Manufacturing		500
325314	Fertilizer (Mixing Only) Manufacturing		500
325320	Pesticide and Other Agricultural Chemical Manufacturing		500
325411	Medicinal and Botanical Manufacturing		750
325412	Pharmaceutical Preparation Manufacturing		750
325413	In-Vitro Diagnostic Substance Manufacturing		500
325414	Biological Product (except Diagnostic) Manufacturing		500
325510	Paint and Coating Manufacturing		500
325520	Adhesive Manufacturing		500
325611	Soap and Other Detergent Manufacturing		750
325612	Polish and Other Sanitation Good Manufacturing		500
325613	Surface Active Agent Manufacturing		500
325620	Toilet Preparation Manufacturing		500
325910	Printing Ink Manufacturing		500
325920	Explosives Manufacturing		750
325991	Custom Compounding of Purchased Resins		500
325992	Photographic Film, Paper, Plate and Chemical Manufacturing		500
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing		500
Subsector 326 – Plastics and Rubber Products Manufacturing			
326111	Plastic Bag and Pouch Manufacturing		500
326112	Plastics Packaging Film and Sheet (including Laminated) Manufacturing		500
326113	Unlaminated Plastics Film and Sheet (except Packaging) Manufacturing		500
326121	Unlaminated Plastics Profile Shape Manufacturing		500
326122	Plastics Pipe and Pipe Fitting Manufacturing		500
326130	Laminated Plastics Plate, Sheet (except Packaging), and Shape Manufacturing		500
326140	Polystyrene Foam Product Manufacturing		500

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
326150	Urethane and Other Foam Product (except Polystyrene) Manufacturing		500
326160	Plastics Bottle Manufacturing		500
326191	Plastics Plumbing Fixture Manufacturing		500
326199	All Other Plastics Product Manufacturing		750
326211	Tire Manufacturing (except Retreading) ⁵		1,000 ⁵
326212	Tire Retreading		500
326220	Rubber and Plastics Hoses and Belting Manufacturing		500
326291	Rubber Product Manufacturing for Mechanical Use		500
326299	All Other Rubber Product Manufacturing		500
Subsector 327 – Nonmetallic Mineral Product Manufacturing			
327110	Pottery, Ceramics, and Plumbing Fixture Manufacturing		750
327120	Clay Building Material and Refractories Manufacturing		750
327211	Flat Glass Manufacturing		1,000
327212	Other Pressed and Blown Glass and Glassware Manufacturing		750
327213	Glass Container Manufacturing		750
327215	Glass Product Manufacturing Made of Purchased Glass		500
327310	Cement Manufacturing		750
327320	Ready-Mix Concrete Manufacturing		500
327331	Concrete Block and Brick Manufacturing		500
327332	Concrete Pipe Manufacturing		500
327390	Other Concrete Product Manufacturing		500
327410	Lime Manufacturing		500
327420	Gypsum Product Manufacturing		1,000
327910	Abrasive Product Manufacturing		500
327991	Cut Stone and Stone Product Manufacturing		500
327992	Ground or Treated Mineral and Earth Manufacturing		500
327993	Mineral Wool Manufacturing		750
327999	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing		500

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
Subsector 331 – Primary Metal Manufacturing			
331110	Iron and Steel Mills and Ferroalloy Manufacturing		1,000
331210	Iron and Steel Pipe and Tube Manufacturing from Purchased Steel		1,000
331221	Rolled Steel Shape Manufacturing		1,000
331222	Steel Wire Drawing		1,000
331313	Alumina Refining and Primary Aluminum Production		1,000
331314	Secondary Smelting and Alloying of Aluminum		750
331315	Aluminum Sheet, Plate and Foil Manufacturing		750
331318	Other Aluminum Rolling, Drawing, and Extruding		750
331410	Nonferrous Metal (except Aluminum) Smelting and Refining		1,000
331420	Copper Rolling, Drawing, Extruding, and Alloying		1,000
331491	Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing and Extruding		750
331492	Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and Aluminum)		750
331511	Iron Foundries		500
331512	Steel Investment Foundries		500
331513	Steel Foundries (except Investment)		500
331523	Nonferrous Metal Die-Casting Foundries		500
331524	Aluminum Foundries (except Die-Casting)		500
331529	Other Nonferrous Metal Foundries (except Die-Casting)		500
Subsector 332 – Fabricated Metal Product Manufacturing			
332111	Iron and Steel Forging		500
332112	Nonferrous Forging		500
332114	Custom Roll Forming		500
332117	Powder Metallurgy Part Manufacturing		500
332119	Metal Crown, Closure, and Other Metal Stamping (except Automotive)		500
332215	Metal Kitchen Cookware, Utensil, Cutlery, and Flatware (except Precious) Manufacturing		500
332216	Saw Blade and Handtool Manufacturing		500
332311	Prefabricated Metal Building and Component Manufacturing		500
332312	Fabricated Structural Metal Manufacturing		500

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
332313	Plate Work Manufacturing		500
332321	Metal Window and Door Manufacturing		500
332322	Sheet Metal Work Manufacturing		500
332323	Ornamental and Architectural Metal Work Manufacturing		500
332410	Power Boiler and Heat Exchanger Manufacturing		500
332420	Metal Tank (Heavy Gauge) Manufacturing		500
332431	Metal Can Manufacturing		1,000
332439	Other Metal Container Manufacturing		500
332510	Hardware Manufacturing		500
332613	Spring Manufacturing		500
332618	Other Fabricated Wire Product Manufacturing		500
332710	Machine Shops		500
332721	Precision Turned Product Manufacturing		500
332722	Bolt, Nut, Screw, Rivet and Washer Manufacturing		500
332811	Metal Heat Treating		750
332812	Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers		500
332813	Electroplating, Plating, Polishing, Anodizing and Coloring		500
332911	Industrial Valve Manufacturing		500
332912	Fluid Power Valve and Hose Fitting Manufacturing		500
332913	Plumbing Fixture Fitting and Trim Manufacturing		500
332919	Other Metal Valve and Pipe Fitting Manufacturing		500
332991	Ball and Roller Bearing Manufacturing		750
332992	Small Arms Ammunition Manufacturing		1,000
332993	Ammunition (except Small Arms) Manufacturing		1,500
332994	Small Arms, Ordnance, and Ordnance Accessories Manufacturing		1,000
332996	Fabricated Pipe and Pipe Fitting Manufacturing		500
332999	All Other Miscellaneous Fabricated Metal Product Manufacturing		750
Subsector 333 – Machinery Manufacturing⁶			
333111	Farm Machinery and Equipment Manufacturing		500
333112	Lawn and Garden Tractor and Home Lawn and Garden Equipment Manufacturing		500
333120	Construction Machinery Manufacturing		750

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
333131	Mining Machinery and Equipment Manufacturing		500
333132	Oil and Gas Field Machinery and Equipment Manufacturing		500
333241	Food Product Machinery Manufacturing		500
333242	Semiconductor Machinery Manufacturing		500
333243	Sawmill, Woodworking, and Paper Machinery Manufacturing		500
333244	Printing Machinery and Equipment Manufacturing		500
333249	Other Industrial Machinery Manufacturing		500
333314	Optical Instrument and Lens Manufacturing		500
333316	Photographic and Photocopying Equipment Manufacturing		1,000
333318	Other Commercial and Service Industry Machinery Manufacturing		1,000
333413	Industrial and Commercial Fan and Blower and Air Purification Equipment Manufacturing		500
333414	Heating Equipment (except Warm Air Furnaces) Manufacturing		500
333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing		750
333511	Industrial Mold Manufacturing		500
333514	Special Die and Tool, Die Set, Jig and Fixture Manufacturing		500
333515	Cutting Tool and Machine Tool Accessory Manufacturing		500
333517	Machine Tool Manufacturing		500
333519	Rolling Mill and Other Metalworking Machinery Manufacturing		500
333611	Turbine and Turbine Generator Set Unit Manufacturing		1,000
333612	Speed Changer, Industrial High-Speed Drive and Gear Manufacturing		500
333613	Mechanical Power Transmission Equipment Manufacturing		500
333618	Other Engine Equipment Manufacturing		1,000
333911	Pump and Pumping Equipment Manufacturing		500

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
333912	Air and Gas Compressor Manufacturing		500
333913	Measuring and Dispensing Pump Manufacturing		500
333921	Elevator and Moving Stairway Manufacturing		500
333922	Conveyor and Conveying Equipment Manufacturing		500
333923	Overhead Traveling Crane, Hoist and Monorail System Manufacturing		500
333924	Industrial Truck, Tractor, Trailer and Stacker Machinery Manufacturing		750
333991	Power-Driven Hand Tool Manufacturing		500
333992	Welding and Soldering Equipment Manufacturing		500
333993	Packaging Machinery Manufacturing		500
333994	Industrial Process Furnace and Oven Manufacturing		500
333995	Fluid Power Cylinder and Actuator Manufacturing		500
333996	Fluid Power Pump and Motor Manufacturing		500
333997	Scale and Balance Manufacturing		500
333999	All Other Miscellaneous General Purpose Machinery Manufacturing		500
Subsector 334 – Computer and Electronic Product Manufacturing⁶			
334111	Electronic Computer Manufacturing		1,000
334112	Computer Storage Device Manufacturing		1,000
334118	Computer Terminal and Other Computer Peripheral Equipment Manufacturing		1,000
334210	Telephone Apparatus Manufacturing		1,000
334220	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing		750
334290	Other Communications Equipment Manufacturing		750
334310	Audio and Video Equipment Manufacturing		750
334412	Bare Printed Circuit Board Manufacturing		500
334413	Semiconductor and Related Device Manufacturing		500
334416	Capacitor, Resistor, Coil, Transformer, and Other Inductor Manufacturing		500
334417	Electronic Connector Manufacturing		500
334418	Printed Circuit Assembly (Electronic Assembly) Manufacturing		500
334419	Other Electronic Component Manufacturing		500
334510	Electromedical and Electrotherapeutic Apparatus Manufacturing		500

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
334511	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing		750
334512	Automatic Environmental Control Manufacturing for Residential, Commercial and Appliance Use		500
334513	Instruments and Related Products Manufacturing for Measuring, Displaying, and Controlling Industrial Process Variables		500
334514	Totalizing Fluid Meter and Counting Device Manufacturing		500
334515	Instrument Manufacturing for Measuring and Testing Electricity and Electrical Signals		500
334516	Analytical Laboratory Instrument Manufacturing		500
334517	Irradiation Apparatus Manufacturing		500
334519	Other Measuring and Controlling Device Manufacturing		500
334613	Blank Magnetic and Optical Recording Media Manufacturing		1,000
334614	Software and Other Prerecorded Compact Disc, Tape, and Record Reproducing		750
Subsector 335 – Electrical Equipment, Appliance and Component Manufacturing⁶			
335110	Electric Lamp Bulb and Part Manufacturing		1,000
335121	Residential Electric Lighting Fixture Manufacturing		500
335122	Commercial, Industrial and Institutional Electric Lighting Fixture Manufacturing		500
335129	Other Lighting Equipment Manufacturing		500
335210	Small Electrical Appliance Manufacturing		750
335221	Household Cooking Appliance Manufacturing		750
335222	Household Refrigerator and Home Freezer Manufacturing		1,000
335224	Household Laundry Equipment Manufacturing		1,000
335228	Other Major Household Appliance Manufacturing		500
335311	Power, Distribution and Specialty Transformer Manufacturing		750
335312	Motor and Generator Manufacturing		1,000
335313	Switchgear and Switchboard Apparatus Manufacturing		750

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
335314	Relay and Industrial Control Manufacturing		750
335911	Storage Battery Manufacturing		500
335912	Primary Battery Manufacturing		1,000
335921	Fiber Optic Cable Manufacturing		1,000
335929	Other Communication and Energy Wire Manufacturing		1,000
335931	Current-Carrying Wiring Device Manufacturing		500
335932	Noncurrent-Carrying Wiring Device Manufacturing		500
335991	Carbon and Graphite Product Manufacturing		750
335999	All Other Miscellaneous Electrical Equipment and Component Manufacturing		500
Subsector 336 – Transportation Equipment Manufacturing⁶			
336111	Automobile Manufacturing		1,000
336112	Light Truck and Utility Vehicle Manufacturing		1,000
336120	Heavy Duty Truck Manufacturing		1,000
336211	Motor Vehicle Body Manufacturing		1,000
336212	Truck Trailer Manufacturing		500
336213	Motor Home Manufacturing		1,000
336214	Travel Trailer and Camper Manufacturing		500
336310	Motor Vehicle Gasoline Engine and Engine Parts Manufacturing		750
336320	Motor Vehicle Electrical and Electronic Equipment Manufacturing		750
336330	Motor Vehicle Steering and Suspension Components (except Spring) Manufacturing		750
336340	Motor Vehicle Brake System Manufacturing		750
336350	Motor Vehicle Transmission and Power Train Parts Manufacturing		750
336360	Motor Vehicle Seating and Interior Trim Manufacturing		500
336370	Motor Vehicle Metal Stamping		500
336390	Other Motor Vehicle Parts Manufacturing		750
336411	Aircraft Manufacturing		1,500
336412	Aircraft Engine and Engine Parts Manufacturing		1,000
336413	Other Aircraft Part and Auxiliary Equipment Manufacturing ⁷		1,000 ⁷
336414	Guided Missile and Space Vehicle Manufacturing		1,000

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
336415	Guided Missile and Space Vehicle Propulsion Unit and Propulsion Unit Parts Manufacturing		1,000
336419	Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing		1,000
336510	Railroad Rolling Stock Manufacturing		1,000
336611	Ship Building and Repairing		1,000
336612	Boat Building		500
336991	Motorcycle, Bicycle and Parts Manufacturing		500
336992	Military Armored Vehicle, Tank and Tank Component Manufacturing		1,000
336999	All Other Transportation Equipment Manufacturing		500
Subsector 337 – Furniture and Related Product Manufacturing			
337110	Wood Kitchen Cabinet and Counter Top Manufacturing		500
337121	Upholstered Household Furniture Manufacturing		500
337122	Nonupholstered Wood Household Furniture Manufacturing		500
337124	Metal Household Furniture Manufacturing		500
337125	Household Furniture (except Wood and Metal) Manufacturing		500
337127	Institutional Furniture Manufacturing		500
337211	Wood Office Furniture Manufacturing		500
337212	Custom Architectural Woodwork and Millwork Manufacturing		500
337214	Office Furniture (Except Wood) Manufacturing		500
337215	Showcase, Partition, Shelving, and Locker Manufacturing		500
337910	Mattress Manufacturing		500
337920	Blind and Shade Manufacturing		500
Subsector 339 – Miscellaneous Manufacturing			
339112	Surgical and Medical Instrument Manufacturing		500
339113	Surgical Appliance and Supplies Manufacturing		500
339114	Dental Equipment and Supplies Manufacturing		500
339115	Ophthalmic Goods Manufacturing		500
339116	Dental Laboratories		500
339910	Jewelry and Silverware Manufacturing		500
339920	Sporting and Athletic Goods Manufacturing		500

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
339930	Doll, Toy, and Game Manufacturing		500
339940	Office Supplies (except Paper) Manufacturing		500
339950	Sign Manufacturing		500
339991	Gasket, Packing, and Sealing Device Manufacturing		500
339992	Musical Instrument Manufacturing		500
339993	Fastener, Button, Needle and Pin Manufacturing		500
339994	Broom, Brush and Mop Manufacturing		500
339995	Burial Casket Manufacturing		500
339999	All Other Miscellaneous Manufacturing		500
Sector 42 – Wholesale Trade			
(These NAICS codes shall not be used to classify Government acquisitions for supplies. They also shall not be used by Federal government contractors when subcontracting for the acquisition for supplies. The applicable manufacturing NAICS code shall be used to classify acquisitions for supplies. A Wholesale Trade or Retail Trade business concern submitting an offer or a quote on a supply acquisition is categorized as a nonmanufacturer and deemed small if it has 500 or fewer employees and meets the requirements of 13 CFR 121.406.)			
Subsector 423 – Merchant Wholesalers, Durable Goods			
423110	Automobile and Other Motor Vehicle Merchant Wholesalers		100
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers		100
423130	Tire and Tube Merchant Wholesalers		100
423140	Motor Vehicle Parts (Used) Merchant Wholesalers		100
423210	Furniture Merchant Wholesalers		100
423220	Home Furnishing Merchant Wholesalers		100
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers		100
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers		100
423330	Roofing, Siding, and Insulation Material Merchant Wholesalers		100
423390	Other Construction Material Merchant Wholesalers		100
423410	Photographic Equipment and Supplies Merchant Wholesalers		100
423420	Office Equipment Merchant Wholesalers		100

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers		100
423440	Other Commercial Equipment Merchant Wholesalers		100
423450	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers		100
423460	Ophthalmic Goods Merchant Wholesalers		100
423490	Other Professional Equipment and Supplies Merchant Wholesalers		100
423510	Metal Service Centers and Other Metal Merchant Wholesalers		100
423520	Coal and Other Mineral and Ore Merchant Wholesalers		100
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers		100
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers		100
423690	Other Electronic Parts and Equipment Merchant Wholesalers		100
423710	Hardware Merchant Wholesalers		100
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers		100
423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers		100
423740	Refrigeration Equipment and Supplies Merchant Wholesalers		100
423810	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers		100
423820	Farm and Garden Machinery and Equipment Merchant Wholesalers		100
423830	Industrial Machinery and Equipment Merchant Wholesalers		100
423840	Industrial Supplies Merchant Wholesalers		100
423850	Service Establishment Equipment and Supplies Merchant Wholesalers		100
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers		100

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
423910	Sporting and Recreational Goods and Supplies Merchant Wholesalers		100
423920	Toy and Hobby Goods and Supplies Merchant Wholesalers		100
423930	Recyclable Material Merchant Wholesalers		100
423940	Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers		100
423990	Other Miscellaneous Durable Goods Merchant Wholesalers		100
Subsector 424 – Merchant Wholesalers, Nondurable Goods			
424110	Printing and Writing Paper Merchant Wholesalers		100
424120	Stationary and Office Supplies Merchant Wholesalers		100
424130	Industrial and Personal Service Paper Merchant Wholesalers		100
424210	Drugs and Druggists' Sundries Merchant Wholesalers		100
424310	Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers		100
424320	Men's and Boys' Clothing and Furnishings Merchant Wholesalers		100
424330	Women's, Children's, and Infants' Clothing and Accessories Merchant Wholesalers		100
424340	Footwear Merchant Wholesalers		100
424410	General Line Grocery Merchant Wholesalers		100
424420	Packaged Frozen Food Merchant Wholesalers		100
424430	Dairy Product (except Dried or Canned) Merchant Wholesalers		100
424440	Poultry and Poultry Product Merchant Wholesalers		100
424450	Confectionery Merchant Wholesalers		100
424460	Fish and Seafood Merchant Wholesalers		100
424470	Meat and Meat Product Merchant Wholesalers		100
424480	Fresh Fruit and Vegetable Merchant Wholesalers		100
424490	Other Grocery and Related Products Merchant Wholesalers		100
424510	Grain and Field Bean Merchant Wholesalers		100
424520	Livestock Merchant Wholesalers		100
424590	Other Farm Product Raw Material Merchant Wholesalers		100

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers		100
424690	Other Chemical and Allied Products Merchant Wholesalers		100
424710	Petroleum Bulk Stations and Terminals		100
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)		100
424810	Beer and Ale Merchant Wholesalers		100
424820	Wine and Distilled Alcoholic Beverage Merchant Wholesalers		100
424910	Farm Supplies Merchant Wholesalers		100
424920	Book, Periodical, and Newspaper Merchant Wholesalers		100
424930	Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers		100
424940	Tobacco and Tobacco Product Merchant Wholesalers		100
424950	Paint, Varnish, and Supplies Merchant Wholesalers		100
424990	Other Miscellaneous Nondurable Goods Merchant Wholesalers		100
Subsector 425 – Wholesale Electronic Markets and Agents and Brokers			
425110	Business to Business Electronic Markets		100
425120	Wholesale Trade Agents and Brokers		100
Sector 44 - 45 – Retail Trade			
(These NAICS codes shall not be used to classify Government acquisitions for supplies. They also shall not be used by Federal government contractors when subcontracting for the acquisition for supplies. The applicable manufacturing NAICS code shall be used to classify acquisitions for supplies. A Wholesale Trade or Retail Trade business concern submitting an offer or a quote on a supply acquisition is categorized as a nonmanufacturer and deemed small if it has 500 or fewer employees and meets the requirements of 13 CFR 121.406.)			
Subsector 441 – Motor Vehicle and Parts Dealers			
441110	New Car Dealers		200
441120	Used Car Dealers	\$23.0	
441210	Recreational Vehicle Dealers	\$30.0	
441222	Boat Dealers	\$30.0	
441228	Motorcycle, ATV, and All Other Motor Vehicle Dealers	\$30.0	

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
441310	Automotive Parts and Accessories Stores	\$14.0	
441320	Tire Dealers	\$14.0	
Subsector 442 – Furniture and Home Furnishings Stores			
442110	Furniture Stores	\$19.0	
442210	Floor Covering Stores	\$7.0	
442291	Window Treatment Stores	\$7.0	
442299	All Other Home Furnishings Stores	\$19.0	
Subsector 443 – Electronics and Appliance Stores			
443141	Household Appliance Stores	\$10.0	
443142	Electronics Stores	\$30.0	
Subsector 444 – Building Material and Garden Equipment and Supplies Dealers			
444110	Home Centers	\$35.5	
444120	Paint and Wallpaper Stores	\$25.5	
444130	Hardware Stores	\$7.0	
444190	Other Building Material Dealers	\$19.0	
444210	Outdoor Power Equipment Stores	\$7.0	
444220	Nursery and Garden Centers	\$10.0	
Subsector 445 – Food and Beverage Stores			
445110	Supermarkets and Other Grocery (except Convenience) Stores	\$30.0	
445120	Convenience Stores	\$27.0	
445210	Meat Markets	\$7.0	
445220	Fish and Seafood Markets	\$7.0	
445230	Fruit and Vegetable Markets	\$7.0	
445291	Baked Goods Stores	\$7.0	
445292	Confectionery and Nut Stores	\$7.0	
445299	All Other Specialty Food Stores	\$7.0	
445310	Beer, Wine and Liquor Stores	\$7.0	
Subsector 446 – Health and Personal Care Stores			
446110	Pharmacies and Drug Stores	\$25.5	
446120	Cosmetics, Beauty Supplies and Perfume Stores	\$25.5	
446130	Optical Goods Stores	\$19.0	
446191	Food (Health) Supplement Stores	\$14.0	
446199	All Other Health and Personal Care Stores	\$7.0	
Subsector 447 – Gasoline Stations			
447110	Gasoline Stations with Convenience Stores	\$27.0	
447190	Other Gasoline Stations	\$14.0	

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
Subsector 448 – Clothing and Clothing Accessories Stores			
448110	Men’s Clothing Stores	\$10.0	
448120	Women’s Clothing Stores	\$25.5	
448130	Children’s and Infants’ Clothing Stores	\$30.0	
448140	Family Clothing Stores	\$35.5	
448150	Clothing Accessories Stores	\$14.0	
448190	Other Clothing Stores	\$19.0	
448210	Shoe Stores	\$25.5	
448310	Jewelry Stores	\$14.0	
448320	Luggage and Leather Goods Stores	\$25.5	
Subsector 451 – Sporting Good, Hobby, Book and Music Stores			
451110	Sporting Goods Stores	\$14.0	
451120	Hobby, Toy and Game Stores	\$25.5	
451130	Sewing, Needlework and Piece Goods Stores	\$25.5	
451140	Musical Instrument and Supplies Stores	\$10.0	
451211	Book Stores	\$25.5	
451212	News Dealers and Newsstands	\$7.0	
Subsector 452 – General Merchandise Stores			
452111	Department Stores (except Discount Department Stores)	\$30.0	
452112	Discount Department Stores	\$27.0	
452910	Warehouse Clubs and Superstores	\$27.0	
452990	All Other General Merchandise Stores	\$30.0	
Subsector 453 – Miscellaneous Store Retailers			
453110	Florists	\$7.0	
453210	Office Supplies and Stationery Stores	\$30.0	
453220	Gift, Novelty and Souvenir Stores	\$7.0	
453310	Used Merchandise Stores	\$7.0	
453910	Pet and Pet Supplies Stores	\$19.0	
453920	Art Dealers	\$7.0	
453930	Manufactured (Mobile) Home Dealers	\$14.0	
453991	Tobacco Stores	\$7.0	
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores)	\$7.0	
Subsector 454 – Nonstore Retailers			
454111	Electronic Shopping	\$30.0	
454112	Electronic Auctions	\$35.5	

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
454113	Mail-Order Houses	\$35.5	
454210	Vending Machine Operators	\$10.0	
454310	Fuel Dealers		50
454390	Other Direct Selling Establishments	\$7.0	
Sector 48 - 49 – Transportation and Warehousing			
Subsector 481 – Air Transportation			
481111	Scheduled Passenger Air Transportation		1,500
481112	Scheduled Freight Air Transportation		1,500
481211	Nonscheduled Chartered Passenger Air Transportation		1,500
<i>Except,</i>	Offshore Marine Air Transportation Services	\$28.0	
481212	Nonscheduled Chartered Freight Air Transportation		1,500
<i>Except,</i>	Offshore Marine Air Transportation Services	\$28.0	
481219	Other Nonscheduled Air Transportation	\$14.0	
Subsector 482 – Rail Transportation			
482111	Line-Haul Railroads		1,500
482112	Short Line Railroads		500
Subsector 483 – Water Transportation¹⁵			
483111	Deep Sea Freight Transportation		500
483112	Deep Sea Passenger Transportation		500
483113	Coastal and Great Lakes Freight Transportation		500
483114	Coastal and Great Lakes Passenger Transportation		500
483211	Inland Water Freight Transportation		500
483212	Inland Water Passenger Transportation		500
Subsector 484 – Truck Transportation			
484110	General Freight Trucking, Local	\$25.5	
484121	General Freight Trucking, Long-Distance, Truckload	\$25.5	
484122	General Freight Trucking, Long-Distance, Less Than Truckload	\$25.5	
484210	Used Household and Office Goods Moving	\$25.5	
484220	Specialized Freight (except Used Goods) Trucking, Local	\$25.5	
484230	Specialized Freight (except Used Goods) Trucking, Long-Distance	\$25.5	
Subsector 485 – Transit and Ground Passenger Transportation			
485111	Mixed Mode Transit Systems	\$14.0	
485112	Commuter Rail Systems	\$14.0	

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
485113	Bus and Other Motor Vehicle Transit Systems	\$14.0	
485119	Other Urban Transit Systems	\$14.0	
485210	Interurban and Rural Bus Transportation	\$14.0	
485310	Taxi Service	\$14.0	
485320	Limousine Service	\$14.0	
485410	School and Employee Bus Transportation	\$14.0	
485510	Charter Bus Industry	\$14.0	
485991	Special Needs Transportation	\$14.0	
485999	All Other Transit and Ground Passenger Transportation	\$14.0	
Subsector 486 – Pipeline Transportation			
486110	Pipeline Transportation of Crude Oil		1,500
486210	Pipeline Transportation of Natural Gas	\$25.5	
486910	Pipeline Transportation of Refined Petroleum Products		1,500
486990	All Other Pipeline Transportation	\$34.5	
Subsector 487 – Scenic and Sightseeing Transportation			
487110	Scenic and Sightseeing Transportation, Land	\$7.0	
487210	Scenic and Sightseeing Transportation, Water	\$7.0	
487990	Scenic and Sightseeing Transportation, Other	\$7.0	
Subsector 488 – Support Activities for Transportation			
488111	Air Traffic Control	\$30.0	
488119	Other Airport Operations	\$30.0	
488190	Other Support Activities for Air Transportation	\$30.0	
488210	Support Activities for Rail Transportation	\$14.0	
488310	Port and Harbor Operations	\$35.5	
488320	Marine Cargo Handling	\$35.5	
488330	Navigational Services to Shipping	\$35.5	
488390	Other Support Activities for Water Transportation	\$35.5	
488410	Motor Vehicle Towing	\$7.0	
488490	Other Support Activities for Road Transportation	\$7.0	
488510	Freight Transportation Arrangement ¹⁰	\$14.0 ¹⁰	
<i>Except,</i>	Non-Vessel Owning Common Carriers and Household Goods Forwarders	\$25.5	
488991	Packing and Crating	\$25.5	
488999	All Other Support Activities for Transportation	\$7.0	

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
Subsector 491 – Postal Service			
491110	Postal Service	\$7.0	
Subsector 492 – Couriers and Messengers			
492110	Couriers and Express Delivery Services		1,500
492210	Local Messengers and Local Delivery	\$25.5	
Subsector 493 – Warehousing and Storage			
493110	General Warehousing and Storage	\$25.5	
493120	Refrigerated Warehousing and Storage	\$25.5	
493130	Farm Product Warehousing and Storage	\$25.5	
493190	Other Warehousing and Storage	\$25.5	
Sector 51 – Information			
Subsector 511 – Publishing Industries (except Internet)			
511110	Newspaper Publishers		500
511120	Periodical Publishers		500
511130	Book Publishers		500
511140	Directory and Mailing List Publishers		500
511191	Greeting Card Publishers		500
511199	All Other Publishers		500
511210	Software Publishers	\$35.5	
Subsector 512 – Motion Picture and Sound Recording Industries			
512110	Motion Picture and Video Production	\$30.0	
512120	Motion Picture and Video Distribution	\$29.5	
512131	Motion Picture Theaters (except Drive-Ins)	\$35.5	
512132	Drive-In Motion Picture Theaters	\$7.0	
512191	Teleproduction and Other Postproduction Services	\$29.5	
512199	Other Motion Picture and Video Industries	\$19.0	
512210	Record Production	\$7.0	
512220	Integrated Record Production/Distribution		750
512230	Music Publishers		500
512240	Sound Recording Studios	\$7.0	
512290	Other Sound Recording Industries	\$10.0	
Subsector 515 – Broadcasting (except Internet)			
515111	Radio Networks	\$30.0	
515112	Radio Stations	\$35.5	
515120	Television Broadcasting	\$35.5	
515210	Cable and Other Subscription Programming	\$35.5	

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
Subsector 517 – Telecommunications			
517110	Wired Telecommunications Carriers		1,500
517210	Wireless Telecommunications Carriers (except Satellite)		1,500
517410	Satellite Telecommunications	\$30.0	
517911	Telecommunications Resellers		1,500
517919	All Other Telecommunications	\$30.0	
Subsector 518 – Data Processing, Hosting, and Related Services			
518210	Data Processing, Hosting, and Related Services	\$30.0	
Subsector 519 – Other Information Services			
519110	News Syndicates	\$25.5	
519120	Libraries and Archives	\$14.0	
519130	Internet Publishing and Broadcasting and Web Search Portals		500
519190	All Other Information Services	\$25.5	
Sector 52 – Finance and Insurance			
Subsector 522 – Credit Intermediation and Related Activities			
522110	Commercial Banking ⁸	\$500 million in assets ⁸	
522120	Savings Institutions ⁸	\$500 million in assets ⁸	
522130	Credit Unions ⁸	\$500 million in assets ⁸	
522190	Other Depository Credit Intermediation ⁸	\$500 million in assets ⁸	
522210	Credit Card Issuing ⁸	\$500 million in assets ⁸	
522220	Sales Financing	\$35.5	
522291	Consumer Lending	\$35.5	
522292	Real Estate Credit	\$35.5	
522293	International Trade Financing	\$35.5	
522294	Secondary Market Financing	\$35.5	
522298	All Other Nondepository Credit Intermediation	\$35.5	

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
522310	Mortgage and Nonmortgage Loan Brokers	\$7.0	
522320	Financial Transactions Processing, Reserve, and Clearinghouse Activities	\$35.5	
522390	Other Activities Related to Credit Intermediation	\$19.0	
Subsector 523 – Financial Investments and Related Activities			
523110	Investment Banking and Securities Dealing	\$35.5	
523120	Securities Brokerage	\$35.5	
523130	Commodity Contracts Dealing	\$35.5	
523140	Commodity Contracts Brokerage	\$35.5	
523210	Securities and Commodity Exchanges	\$35.5	
523910	Miscellaneous Intermediation	\$35.5	
523920	Portfolio Management	\$35.5	
523930	Investment Advice	\$35.5	
523991	Trust, Fiduciary and Custody Activities	\$35.5	
523999	Miscellaneous Financial Investment Activities	\$35.5	
Subsector 524 – Insurance Carriers and Related Activities			
524113	Direct Life Insurance Carriers	\$35.5	
524114	Direct Health and Medical Insurance Carriers	\$35.5	
524126	Direct Property and Casualty Insurance Carriers		1,500
524127	Direct Title Insurance Carriers	\$35.5	
524128	Other Direct Insurance (except Life, Health and Medical) Carriers	\$35.5	
524130	Reinsurance Carriers	\$35.5	
524210	Insurance Agencies and Brokerages	\$7.0	
524291	Claims Adjusting	\$19.0	
524292	Third Party Administration of Insurance and Pension Funds	\$30.0	
524298	All Other Insurance Related Activities	\$14.0	
Subsector 525 – Funds, Trusts and Other Financial Vehicles			
525110	Pension Funds	\$30.0	
525120	Health and Welfare Funds	\$30.0	
525190	Other Insurance Funds	\$30.0	
525910	Open-End Investment Funds	\$30.0	
525920	Trusts, Estates, and Agency Accounts	\$30.0	
525990	Other Financial Vehicles	\$30.0	

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
Sector 53 – Real Estate and Rental and Leasing			
Subsector 531 – Real Estate			
531110	Lessors of Residential Buildings and Dwellings	\$25.5	
531120	Lessors of Nonresidential Buildings (except Miniwarehouses)	\$25.5	
531130	Lessors of Miniwarehouses and Self Storage Units	\$25.5	
531190	Lessors of Other Real Estate Property	\$25.5	
<i>Except,</i>	Leasing of Building Space to Federal Government by Owners ⁹	\$35.5 ⁹	
531210	Offices of Real Estate Agents and Brokers ¹⁰	\$7.0 ¹⁰	
531311	Residential Property Managers	\$7.0	
531312	Nonresidential Property Managers	\$7.0	
531320	Offices of Real Estate Appraisers	\$7.0	
531390	Other Activities Related to Real Estate	\$7.0	
Subsector 532 – Rental and Leasing Services			
532111	Passenger Car Rental	\$35.5	
532112	Passenger Car Leasing	\$35.5	
532120	Truck, Utility Trailer, and RV (Recreational Vehicle) Rental and Leasing	\$35.5	
532210	Consumer Electronics and Appliances Rental	\$35.5	
532220	Formal Wear and Costume Rental	\$19.0	
532230	Video Tape and Disc Rental	\$25.5	
532291	Home Health Equipment Rental	\$30.0	
532292	Recreational Goods Rental	\$7.0	
532299	All Other Consumer Goods Rental	\$7.0	
532310	General Rental Centers	\$7.0	
532411	Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing	\$30.0	
532412	Construction, Mining and Forestry Machinery and Equipment Rental and Leasing	\$30.0	
532420	Office Machinery and Equipment Rental and Leasing	\$30.0	
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing	\$30.0	
Subsector 533 – Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)			
533110	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	\$35.5	

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
Sector 54 – Professional, Scientific and Technical Services			
Subsector 541 – Professional, Scientific and Technical Services			
541110	Offices of Lawyers	\$10.0	
541191	Title Abstract and Settlement Offices	\$10.0	
541199	All Other Legal Services	\$10.0	
541211	Offices of Certified Public Accountants	\$19.0	
541213	Tax Preparation Services	\$19.0	
541214	Payroll Services	\$19.0	
541219	Other Accounting Services	\$19.0	
541310	Architectural Services	\$7.0	
541320	Landscape Architectural Services	\$7.0	
541330	Engineering Services	\$14.0	
<i>Except,</i>	Military and Aerospace Equipment and Military Weapons	\$35.5	
<i>Except,</i>	Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992	\$35.5	
<i>Except,</i>	Marine Engineering and Naval Architecture	\$35.5	
541340	Drafting Services	\$7.0	
541350	Building Inspection Services	\$7.0	
541360	Geophysical Surveying and Mapping Services	\$14.0	
541370	Surveying and Mapping (except Geophysical) Services	\$14.0	
541380	Testing Laboratories	\$14.0	
541410	Interior Design Services	\$7.0	
541420	Industrial Design Services	\$7.0	
541430	Graphic Design Services	\$7.0	
541490	Other Specialized Design Services	\$7.0	
541511	Custom Computer Programming Services	\$25.5	
541512	Computer Systems Design Services	\$25.5	
541513	Computer Facilities Management Services	\$25.5	
541519	Other Computer Related Services	\$25.5	
<i>Except,</i>	Information Technology Value Added Resellers ¹⁸		150 ¹⁸
541611	Administrative Management and General Management Consulting Services	\$14.0	
541612	Human Resources Consulting Services	\$14.0	
541613	Marketing Consulting Services	\$14.0	

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
541614	Process, Physical Distribution and Logistics Consulting Services	\$14.0	
541618	Other Management Consulting Services	\$14.0	
541620	Environmental Consulting Services	\$14.0	
541690	Other Scientific and Technical Consulting Services	\$14.0	
541711	Research and Development in Biotechnology ¹¹		500 ¹¹
541712	Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology) ¹¹		500 ¹¹
<i>Except,</i>	Aircraft		1,500
<i>Except,</i>	Aircraft Parts, and Auxiliary Equipment, and Aircraft Engine Parts		1,000
<i>Except,</i>	Space Vehicles and Guided Missiles, their Propulsion Units, their Propulsion Units Parts, and their Auxiliary Equipment and Parts		1,000
541720	Research and Development in the Social Sciences and Humanities	\$19.0	
541810	Advertising Agencies ¹⁰	\$14.0 ¹⁰	
541820	Public Relations Agencies	\$14.0	
541830	Media Buying Agencies	\$14.0	
541840	Media Representatives	\$14.0	
541850	Outdoor Advertising	\$14.0	
541860	Direct Mail Advertising	\$14.0	
541870	Advertising Material Distribution Services	\$14.0	
541890	Other Services Related to Advertising	\$14.0	
541910	Marketing Research and Public Opinion Polling	\$14.0	
541921	Photography Studios, Portrait	\$7.0	
541922	Commercial Photography	\$7.0	
541930	Translation and Interpretation Services	\$7.0	
541940	Veterinary Services	\$7.0	
541990	All Other Professional, Scientific and Technical Services	\$14.0	
Sector 55 – Management of Companies and Enterprises			
Subsector 551 – Management of Companies and Enterprises			
551111	Offices of Bank Holding Companies	\$19.0	
551112	Offices of Other Holding Companies	\$19.0	

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
Sector 56 – Administrative and Support, Waste Management and Remediation Services			
Subsector 561 – Administrative and Support Services			
561110	Office Administrative Services	\$7.0	
561210	Facilities Support Services ¹²	\$35.5 ¹²	
561311	Employment Placement Agencies	\$25.5	
561312	Executive Search Services	\$25.5	
561320	Temporary Help Services	\$25.5	
561330	Professional Employer Organizations	\$25.5	
561410	Document Preparation Services	\$14.0	
561421	Telephone Answering Services	\$14.0	
561422	Telemarketing Bureaus and Other contact Centers	\$14.0	
561431	Private Mail Centers	\$14.0	
561439	Other Business Service Centers (including Copy Shops)	\$14.0	
561440	Collection Agencies	\$14.0	
561450	Credit Bureaus	\$14.0	
561491	Repossession Services	\$14.0	
561492	Court Reporting and Stenotype Services	\$14.0	
561499	All Other Business Support Services	\$14.0	
561510	Travel Agencies ¹⁰	\$19.0 ¹⁰	
561520	Tour Operators ¹⁰	\$19.0 ¹⁰	
561591	Convention and Visitors Bureaus	19.0	
561599	All Other Travel Arrangement and Reservation Services	\$19.0	
561611	Investigation Services	\$19.0	
561612	Security Guards and Patrol Services	\$19.0	
561613	Armored Car Services	\$19.0	
561621	Security Systems Services (except Locksmiths)	\$19.0	
561622	Locksmiths	\$19.0	
561710	Exterminating and Pest Control Services	\$10.0	
561720	Janitorial Services	\$16.5	
561730	Landscaping Services	\$7.0	
561740	Carpet and Upholstery Cleaning Services	\$5.0	
561790	Other Services to Buildings and Dwellings	\$7.0	
561910	Packaging and Labeling Services	\$10.0	
561920	Convention and Trade Show Organizers ¹⁰	\$10.0 ¹⁰	
561990	All Other Support Services	\$10.0	

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
Subsector 562 – Waste Management and Remediation Services			
562111	Solid Waste Collection	\$35.5	
562112	Hazardous Waste Collection	\$35.5	
562119	Other Waste Collection	\$35.5	
562211	Hazardous Waste Treatment and Disposal	\$35.5	
562212	Solid Waste Landfill	\$35.5	
562213	Solid Waste Combustors and Incinerators	\$35.5	
562219	Other Nonhazardous Waste Treatment and Disposal	\$35.5	
562910	Remediation Services	\$19.0	
<i>Except,</i>	Environmental Remediation Services ¹⁴		500 ¹⁴
562920	Materials Recovery Facilities	\$19.0	
562991	Septic Tank and Related Services	\$7.0	
562998	All Other Miscellaneous Waste Management Services	\$7.0	
Sector 61 – Educational Services			
Subsector 611 – Educational Services			
611110	Elementary and Secondary Schools	\$10.0	
611210	Junior Colleges	\$19.0	
611310	Colleges, Universities and Professional Schools	\$25.5	
611410	Business and Secretarial Schools	\$7.0	
611420	Computer Training	\$10.0	
611430	Professional and Management Development Training	\$10.0	
611511	Cosmetology and Barber Schools	\$7.0	
611512	Flight Training	\$25.5	
611513	Apprenticeship Training	\$7.0	
611519	Other Technical and Trade Schools	\$14.0	
<i>Except,</i>	Job Corps Centers ¹⁶	\$35.5 ¹⁶	
611610	Fine Arts Schools	\$7.0	
611620	Sports and Recreation Instruction	\$7.0	
611630	Language Schools	\$10.0	
611691	Exam Preparation and Tutoring	\$7.0	
611692	Automobile Driving Schools	\$7.0	
611699	All Other Miscellaneous Schools and Instruction	\$10.0	
611710	Educational Support Services	\$14.0	

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
Sector 62 – Health Care and Social Assistance			
Subsector 621 – Ambulatory Health Care Services			
621111	Offices of Physicians (except Mental Health Specialists)	\$10.0	
621112	Offices of Physicians, Mental Health Specialists	\$10.0	
621210	Offices of Dentists	\$7.0	
621310	Offices of Chiropractors	\$7.0	
621320	Offices of Optometrists	\$7.0	
621330	Offices of Mental Health Practitioners (except Physicians)	\$7.0	
621340	Offices of Physical, Occupational and Speech Therapists and Audiologists	\$7.0	
621391	Offices of Podiatrists	\$7.0	
621399	Offices of All Other Miscellaneous Health Practitioners	\$7.0	
621410	Family Planning Centers	\$10.0	
621420	Outpatient Mental Health and Substance Abuse Centers	\$14.0	
621491	HMO Medical Centers	\$30.0	
621492	Kidney Dialysis Centers	\$35.5	
621493	Freestanding Ambulatory Surgical and Emergency Centers	\$14.0	
621498	All Other Outpatient Care Centers	\$19.0	
621511	Medical Laboratories	\$30.0	
621512	Diagnostic Imaging Centers	\$14.0	
621610	Home Health Care Services	\$14.0	
621910	Ambulance Services	\$14.0	
621991	Blood and Organ Banks	\$30.0	
621999	All Other Miscellaneous Ambulatory Health Care Services	\$14.0	
Subsector 622 – Hospitals			
622110	General Medical and Surgical Hospitals	\$35.5	
622210	Psychiatric and Substance Abuse Hospitals	\$35.5	
622310	Specialty (except Psychiatric and Substance Abuse) Hospitals	\$35.5	

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
Subsector 623 – Nursing and Residential Care Facilities			
623110	Nursing Care Facilities (Skilled Nursing Facilities)	\$25.5	
623210	Residential Intellectual and Developmental Disability Facilities	\$14.0	
623220	Residential Mental Health and Substance Abuse Facilities	\$14.0	
623311	Continuing Care Retirement Communities	\$25.5	
623312	Assisted Living Facilities for the Elderly	\$10.0	
623990	Other Residential Care Facilities	\$10.0	
Subsector 624 – Social Assistance			
624110	Child and Youth Services	\$10.0	
624120	Services for the Elderly and Persons with Disabilities	\$10.0	
624190	Other Individual and Family Services	\$10.0	
624210	Community Food Services	\$10.0	
624221	Temporary Shelters	\$10.0	
624229	Other Community Housing Services	\$14.0	
624230	Emergency and Other Relief Services	\$30.0	
624310	Vocational Rehabilitation Services	\$10.0	
624410	Child Day Care Services	\$7.0	
Sector 71 – Arts, Entertainment and Recreation			
Subsector 711 – Performing Arts, Spectator Sports and Related Industries			
711110	Theater Companies and Dinner Theaters	\$19.0	
711120	Dance Companies	\$10.0	
711130	Musical Groups and Artists	\$10.0	
711190	Other Performing Arts Companies	\$25.5	
711211	Sports Teams and Clubs	\$35.5	
711212	Race Tracks	\$35.5	
711219	Other Spectator Sports	\$10.0	
711310	Promoters of Performing Arts, Sports and Similar Events with Facilities	\$30.0	
711320	Promoters of Performing Arts, Sports and Similar Events without Facilities	\$14.0	
711410	Agents and Managers for Artists, Athletes, Entertainers and Other Public Figures	\$10.0	
711510	Independent Artists, Writers, and Performers	\$7.0	

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
Subsector 712 – Museums, Historical Sites and Similar Institutions			
712110	Museums	\$25.5	
712120	Historical Sites	\$7.0	
712130	Zoos and Botanical Gardens	\$25.5	
712190	Nature Parks and Other Similar Institutions	\$7.0	
Subsector 713 – Amusement, Gambling and Recreation Industries			
713110	Amusement and Theme Parks	\$35.5	
713120	Amusement Arcades	\$7.0	
713210	Casinos (except Casino Hotels)	\$25.5	
713290	Other Gambling Industries	\$30.0	
713910	Golf Courses and Country Clubs	\$14.0	
713920	Skiing Facilities	\$25.5	
713930	Marinas	\$7.0	
713940	Fitness and Recreational Sports Centers	\$7.0	
713950	Bowling Centers	\$7.0	
713990	All Other Amusement and Recreation Industries	\$7.0	
Sector 72 – Accommodation and Food Services			
Subsector 721 – Accommodation			
721110	Hotels (except Casino Hotels) and Motels	\$30.0	
721120	Casino Hotels	\$30.0	
721191	Bed-and-Breakfast Inns	\$7.0	
721199	All Other Traveler Accommodation	\$7.0	
721211	RV (Recreational Vehicle) Parks and Campgrounds	\$7.0	
721214	Recreational and Vacation Camps (except Campgrounds)	\$7.0	
721310	Rooming and Boarding Houses	\$7.0	
Subsector 722 – Food Services and Drinking Places			
722310	Food Service Contractors	\$35.5	
722320	Caterers	\$7.0	
722330	Mobile Food Services	\$7.0	
722410	Drinking Places (Alcoholic Beverages)	\$7.0	
722511	Full-Service Restaurants	\$7.0	
722513	Limited-Service Restaurants	\$10.0	
722514	Cafeterias, Grill Buffets, and Buffets	\$25.5	
722515	Snack and Nonalcoholic Beverage Bars	\$7.0	

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
Sector 81 – Other Services			
Subsector 811 – Repair and Maintenance			
811111	General Automotive Repair	\$7.0	
811112	Automotive Exhaust System Repair	\$7.0	
811113	Automotive Transmission Repair	\$7.0	
811118	Other Automotive Mechanical and Electrical Repair and Maintenance	\$7.0	
811121	Automotive Body, Paint and Interior Repair and Maintenance	\$7.0	
811122	Automotive Glass Replacement Shops	\$10.0	
811191	Automotive Oil Change and Lubrication Shops	\$7.0	
811192	Car Washes	\$7.0	
811198	All Other Automotive Repair and Maintenance	\$7.0	
811211	Consumer Electronics Repair and Maintenance	\$7.0	
811212	Computer and Office Machine Repair and Maintenance	\$25.5	
811213	Communication Equipment Repair and Maintenance	\$10.0	
811219	Other Electronic and Precision Equipment Repair and Maintenance	\$19.0	
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	\$7.0	
811411	Home and Garden Equipment Repair and Maintenance	\$7.0	
811412	Appliance Repair and Maintenance	\$14.0	
811420	Reupholstery and Furniture Repair	\$7.0	
811430	Footwear and Leather Goods Repair	\$7.0	
811490	Other Personal and Household Goods Repair and Maintenance	\$7.0	
Subsector 812 – Personal and Laundry Services			
812111	Barber Shops	\$7.0	
812112	Beauty Salons	\$7.0	
812113	Nail Salons	\$7.0	
812191	Diet and Weight Reducing Centers	\$19.0	
812199	Other Personal Care Services	\$7.0	
812210	Funeral Homes and Funeral Services	\$7.0	
812220	Cemeteries and Crematories	\$19.0	

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
812310	Coin-Operated Laundries and Drycleaners	\$7.0	
812320	Drycleaning and Laundry Services (except Coin-Operated)	\$5.0	
812331	Linen Supply	\$30.0	
812332	Industrial Launderers	\$35.5	
812910	Pet Care (except Veterinary) Services	\$7.0	
812921	Photofinishing Laboratories (except One-Hour)	\$19.0	
812922	One-Hour Photofinishing	\$14.0	
812930	Parking Lots and Garages	\$35.5	
812990	All Other Personal Services	\$7.0	
Subsector 813 – Religious, Grantmaking, Civic, Professional and Similar Organizations			
813110	Religious Organizations	\$7.0	
813211	Grantmaking Foundations	\$30.0	
813212	Voluntary Health Organizations	\$25.5	
813219	Other Grantmaking and Giving Services	\$35.5	
813311	Human Rights Organizations	\$25.5	
813312	Environment, Conservation and Wildlife Organizations	\$14.0	
813319	Other Social Advocacy Organizations	\$7.0	
813410	Civic and Social Organizations	\$7.0	
813910	Business Associations	\$7.0	
813920	Professional Organizations	\$14.0	
813930	Labor Unions and Similar Labor Organizations	\$7.0	
813940	Political Organizations	\$7.0	
813990	Other Similar Organizations (except Business, Professional, Labor, and Political Organizations)	\$7.0	
Sector 92 – Public Administration¹⁹			
(Small business size standards are not established for this Sector. Establishments in the Public Administration Sector are Federal, state, and local government agencies which administer and oversee government programs and activities that are not performed by private establishments.)			

Footnotes

1. NAICS codes 221111, 221112, 221113, 221114, 221115, 221116, 221117, 221118, 221121, 221122 – A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.
2. NAICS code 237990 – Dredging: To be considered small for purposes of Government procurement, a firm must perform at least 40 percent of the volume dredged with its own equipment or equipment owned by another small dredging concern.
3. NAICS code 311421 – For purposes of Government procurement for food canning and preserving, the standard of 500 employees excludes agricultural labor as defined in section 3306(k) of the Internal Revenue Code, 26 U.S.C. 3306(k).
4. NAICS code 324110 – For purposes of Government procurement, the petroleum refiner must be a concern that has no more than 1,500 employees nor more than 125,000 barrels per calendar day total Operable Atmospheric Crude Oil Distillation capacity. Capacity includes owned or leased facilities as well as facilities under a processing agreement or an arrangement such as an exchange agreement or a throughput. The total product to be delivered under the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.
5. NAICS code 326211 – For Government procurement, a firm is small for bidding on a contract for pneumatic tires within Census Classification codes 30111 and 30112, provided that:
 - a) the value of tires within Census Classification codes 30111 and 30112 which it manufactured in the United States during the previous calendar year is more than 50 percent of the value of its total worldwide manufacture,
 - b) the value of pneumatic tires within Census Classification codes 30111 and 30112 comprising its total worldwide manufacture during the preceding calendar year was less than 5 percent of the value of all such tires manufactured in the United States during that period, and
 - c) the value of the principal product which it manufactured or otherwise produced, or sold worldwide during the preceding calendar year is less than 10 percent of the total value of such products manufactured or otherwise produced or sold in the United States during that period.

6. NAICS Subsectors 333, 334, 335 and 336 – For rebuilding machinery or equipment on a factory basis, or equivalent, use the NAICS code for a newly manufactured product. Concerns performing major rebuilding or overhaul activities do not necessarily have to meet the criteria for being a "manufacturer" although the activities may be classified under a manufacturing NAICS code. Ordinary repair services or preservation are not considered rebuilding.
7. NAICS code 336413 – Contracts for the rebuilding or overhaul of aircraft ground support equipment on a contract basis are classified under NAICS code 336413.
8. NAICS Codes 522110, 522120, 522130, 522190, and 522210 – A financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year. "Assets" for the purposes of this size standard means the assets defined according to the Federal Financial Institutions Examination Council 041 call report form for NAICS Codes 522110, 522120, 522190, and 522210 and the National Credit Union Administration 5300 call report form for NAICS code 522130.
9. NAICS code 531190 – Leasing of building space to the Federal Government by Owners: For Government procurement, a size standard of \$35.5 million in gross receipts applies to the owners of building space leased to the Federal Government. The standard does not apply to an agent.
10. NAICS codes 488510, 531210, 541810, 561510, 561520 and 561920 – As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue.
11. NAICS code 541711 and 541712 – For research and development contracts requiring the delivery of a manufactured product, the appropriate size standard is that of the manufacturing industry.
 - a) "Research and Development" means laboratory or other physical research and development. It does not include economic, educational, engineering, operations, systems, or other nonphysical research; or computer programming, data processing, commercial and/or medical laboratory testing.
 - b) For purposes of the Small Business Innovation Research (SBIR) program only, a different definition has been established by law. See section 121.701 of these regulations.
 - c) "Research and Development" for guided missiles and space vehicles includes evaluations and simulation, and other services requiring thorough knowledge of complete missiles and spacecraft.

12. NAICS 561210 – Facilities Support Services:

- a) If one or more activities of Facilities Support Services as defined in paragraph (b) (below in this footnote) can be identified with a specific industry and that industry accounts for 50% or more of the value of an entire procurement, then the proper classification of the procurement is that of the specific industry, not Facilities Support Services.
- b) "Facilities Support Services" requires the performance of three or more separate activities in the areas of services or specialty trade contractors industries. If services are performed, these service activities must each be in a separate NAICS industry. If the procurement requires the use of specialty trade contractors (plumbing, painting, plastering, carpentry, *etc.*), all such specialty trade contractors activities are considered a single activity and classified as "Building and Property Specialty Trade Services." Since "Building and Property Specialty Trade Services" is only one activity, two additional activities of separate NAICS industries are required for a procurement to be classified as "Facilities Support Services."

13. NAICS code 238990 – Building and Property Specialty Trade Services: If a procurement requires the use of multiple specialty trade contractors (i.e., plumbing, painting, plastering, carpentry, *etc.*), and no specialty trade accounts for 50% or more of the value of the procurement, all such specialty trade contractors activities are considered a single activity and classified as Building and Property Specialty Trade Services.

14. NAICS 562910 – Environmental Remediation Services:

- a) For SBA assistance as a small business concern in the industry of Environmental Remediation Services, other than for Government procurement, a concern must be engaged primarily in furnishing a range of services for the remediation of a contaminated environment to an acceptable condition including, but not limited to, preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, containment, remedial action, removal of contaminated materials, storage of contaminated materials and security and site closeouts. If one of such activities accounts for 50 percent or more of a concern's total revenues, employees, or other related factors, the concern's primary industry is that of the particular industry and not the Environmental Remediation Services Industry.
- b) For purposes of classifying a Government procurement as Environmental Remediation Services, the general purpose of the procurement must be to restore or directly support the restoration of a contaminated environment. This includes activities such as preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, remediation services, containment, and removal of contaminated materials or security and site closeouts. The general purpose of the procurement need not necessarily include remedial actions. Also, the procurement must be composed of activities in three or more separate industries with separate

NAICS codes or, in some instances (e.g., engineering), smaller sub-components of NAICS codes with separate and distinct size standards. These activities may include, but are not limited to, separate activities in industries such as: Heavy Construction; Special Trade Contractors; Engineering Services; Architectural Services; Management Consulting Services; Hazardous and Other Waste Collection; Remediation Services; Testing Laboratories; and Research and Development in the Physical, Engineering, and Life Sciences. If any activity in the procurement can be identified with a separate NAICS code, or component of a code with a separate distinct size standard, and that industry accounts for 50 percent or more of the value of the entire procurement, then the proper size standard is the one for that particular industry, and not the Environmental Remediation Service size standard.

15. Subsector 483 – Water Transportation – Offshore Marine Services: The applicable size standard shall be \$28.0 million for firms furnishing specific transportation services to concerns engaged in offshore oil and/or natural gas exploration, drilling production, or marine research; such services encompass passenger and freight transportation, anchor handling, and related logistical services to and from the work site.

16. NAICS code 611519 – Job Corps Centers. For classifying a Federal procurement, the purpose of the solicitation must be for the management and operation of a U.S. Department of Labor Job Corps Center. The activities involved include admissions activities, life skills training, educational activities, comprehensive career preparation activities, career development activities, career transition activities, as well as the management and support functions and services needed to operate and maintain the facility. For SBA assistance as a small business concern, other than for Federal Government procurements, a concern must be primarily engaged in providing the services to operate and maintain Federal Job Corps Centers.

17. NAICS code 115310 – Support Activities for Forestry – Forest Fire Suppression and Fuels Management Services are two components of Support Activities for Forestry. Forest Fire Suppression includes establishments which provide services to fight forest fires. These firms usually have fire-fighting crews and equipment. Fuels Management Services firms provide services to clear land of hazardous materials that would fuel forest fires. The treatments used by these firms may include prescribed fire, mechanical removal, establishing fuel breaks, thinning, pruning, and piling.

18. NAICS code 541519 – An Information Technology Value Added Reseller provides a total solution to information technology acquisitions by providing multi-vendor hardware and software along with significant services. Significant value added services consist of, but are not limited to, configuration consulting and design, systems integration, installation of multi-vendor computer equipment, customization of hardware or software, training, product technical support, maintenance, and end user support. For purposes of Government procurement, an information technology procurement classified under this industry category must consist of at least 15% and not more than 50% of value added services as measured by the total price less

the cost of information technology hardware, computer software, and profit. If the contract consists of less than 15% of value added services, then it must be classified under a NAICS manufacturing industry. If the contract consists of more than 50% of value added services, then it must be classified under the NAICS industry that best describes the predominate service of the procurement. To qualify as an Information Technology Value Added Reseller for purposes of SBA assistance, other than for Government procurement, a concern must be primarily engaged in providing information technology equipment and computer software and provide value added services which account for at least 15% of its receipts but not more than 50% of its receipts.

19. NAICS Sector 92 – Small business size standards are not established for this sector. Establishments in the Public Administration sector are Federal, State, and local government agencies which administer and oversee government programs and activities that are not performed by private establishments. Concerns performing operational services for the administration of a government program are classified under the NAICS private sector industry based on the activities performed. Similarly, procurements for these types of services are classified under the NAICS private sector industry that best describes the activities to be performed. For example, if a government agency issues a procurement for law enforcement services, the requirement would be classified using one of the NAICS industry codes under NAICS industry 56161, Investigation, Guard, and Armored Car Services.

Contacts SBA's Office of Government Contracting has six offices with an employee designated as a Size Specialist. Below are the office addresses and telephone numbers.	
Area I Office of Government Contracting Boston Area Office U.S. Small Business Administration 10 Causeway Street Room 265 Boston, MA 02222-1093 Tel: (617) 565-5622	Area IV Office of Government Contracting Chicago Area Office U.S. Small Business Administration 500 West Madison Street Suite 1250 Chicago, IL 60661-2511 Tel: 312.353.7674
Area II Office of Government Contracting Philadelphia Area Office U.S. Small Business Administration Parkview Tower 1150 First Avenue Suite 1001 King of Prussia, PA 19406 Tel: (610) 382-3190	Area V Office Government Contracting Dallas Area Office U.S. Small Business Administration 4300 Amon Carter Boulevard, Suite 116 Fort Worth, TX 76155 Tel: (817) 684-5303
Area III Office of Government Contracting Atlanta Area Office U.S. Small Business Administration 233 Peachtree Street, NE Suite 1805 Atlanta, GA 30309 Tel: (404) 331-7587	Area VI Office of Government Contracting San Francisco Area Office U.S. Small Business Administration 455 Market Street 6th Floor San Francisco, CA 94105 Tel: (415) 744-8429
IN WASHINGTON, DC, THERE ARE TWO OFFICES THAT YOU MAY CONTACT	
Office of Size Standards U.S. Small Business Administration 409 3rd Street, SW Washington, DC 20416 Tel: (202) 205-6618	Office of Contracting Assistance U.S. Small Business Administration 409 3rd Street, SW Washington, DC 20416 Tel: (202) 205-6460